

AN ACT relating to economic development, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔ Section 1. KRS 154.34-010 is amended to read as follows:

As used in **this subchapter**~~[KRS 154.34-010 to 154.34-100, unless the context clearly indicates otherwise]:~~

(1) "Approved company" means ~~an~~any eligible company **approved for a reinvestment project**~~[for which the authority has granted final approval of its application pursuant to KRS 154.34-070];~~

(2) "Approved costs" means **the sum of the:**

(a) [that portion of the]Eligible equipment and related costs; and

(b) Eligible skills upgrade training costs;

approved by the authority that **may be recovered by** an approved company~~[may recover]~~ through the **incentives**~~[inducements]~~ authorized by **this subchapter**~~[KRS 154.34-010 to 154.34-100; however, approved costs shall not exceed ten percent (10%) of the eligible costs];~~

(3) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(4) "Commonwealth" means the Commonwealth of Kentucky;

(5) "Department" means the Department of Revenue;

(6)~~[(5)]~~ "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity~~[designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code of 336211, 336111, 336112, or 336120 that employs a minimum of one thousand (1,000) full-time persons]~~ engaged in manufacturing at a~~[the same]~~ facility~~[or at multiple facilities located within the same county, whether owned or leased, is]~~ located and operating within the Commonwealth on a permanent basis for a reasonable period

1 of time preceding the request for approval of a reinvestment project by the
2 authority~~[of a reinvestment project which meets the standards set forth in KRS~~
3 ~~154.34-070, and has not been an approved company in an industrial revitalization~~
4 ~~project under Subchapter 26 of KRS Chapter 154 for a period of at least five (5)~~
5 ~~years];~~

6 ~~(7)~~ ~~(a)~~~~[(6)]~~ "Eligible equipment and related costs" means:

7 ~~1.~~~~[(a)]~~ Obligations incurred for labor and to vendors, contractors,
8 subcontractors, builders, suppliers, deliverymen, and materialmen in
9 connection with the acquisition, construction, equipping, rehabilitation,
10 and installation of ~~a~~~~[an existing manufacturing]~~ reinvestment project;

11 ~~2.~~~~[(b)]~~ The cost of contract bonds and of insurance of all kinds that may
12 be required or necessary during the course of acquisition, construction,
13 equipping, rehabilitation, and installation of a reinvestment project
14 which is not paid by the vendor, supplier, deliveryman, contractor, or
15 otherwise provided;

16 ~~3.~~~~[(c)]~~ All costs of architectural and engineering services, including
17 estimates, plans and specifications, preliminary investigations, and
18 supervision of construction, rehabilitation and installation, as well as for
19 the performance of all the duties required by or consequent upon the
20 acquisition, construction, equipping, rehabilitation, and installation of a
21 reinvestment project;

22 ~~4.~~~~[(d)]~~ All costs required to be paid under the terms of any contract for the
23 acquisition, construction, equipping, rehabilitation, and installation of
24 ~~a~~~~[an existing manufacturing]~~ reinvestment project;~~[and]~~

25 ~~5.~~~~[(e)]~~ All costs required for the installation of utilities, including but not
26 limited to water, sewer, sewer treatment, gas, electricity,

communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company; and

6. All other costs of a nature comparable to those described in this paragraph.

(b) "Eligible equipment and related costs" does not include costs related to the replacement or repair of existing machinery or equipment resulting from normal wear and usage of the machinery;

(8) "Eligible skills upgrade training costs" means costs incurred by an approved company in connection with an occupational training program for full-time employees specifically related to training or retraining employees as part of the reinvestment project, including the following:

(a) Fees or salaries paid to instructors, whether those instructors are employees of the approved company, contractors, or consultants;

(b) Administrative fees paid to educational institutions;

(c) Amounts paid for supplies, materials, and equipment used exclusively for the occupational training program;

(d) Amounts paid to lease a training facility if sufficient training space is not available at the approved company or at an educational institution;

(e) Amounts paid to employees as wages for attending the occupational training program;

(f) Amounts paid for travel expenses for employees; and

(g) All other costs of a nature comparable to those described in this subsection;

(9)[(7)] "Equipment" means manufacturing machinery installed by the approved company as part of the reinvestment[at the] project[; however, Equipment shall not mean accessories or appurtenances of existing or new manufacturing machinery including but not limited to molds, dies, or other attachments of a less permanent nature];

1 ~~(10)~~⁽⁸⁾ "Final approval" means the action taken~~after July 1, 2004,~~ by the authority
2 designating a preliminarily approved eligible company~~[an eligible company that~~
3 ~~has previously received a preliminary approval]~~ as an approved company;

4 **(11) "Full-time" means a minimum of thirty-five (35) hours per week;**

5 **(12) "Kentucky gross profits" has the same meaning as in KRS 141.0401;**

6 **(13) "Kentucky gross receipts" has the same meaning as in KRS 141.0401**

7 ~~[and authorizing the execution of a reinvestment agreement between the authority and~~
8 ~~the approved company;~~

9 ~~(9) "Inducements" means the Kentucky tax credits as authorized by KRS 154.34-010 to~~
10 ~~154.34-100];~~

11 ~~(14)~~⁽¹⁰⁾ "Manufacturing" means any activity involving the~~[manufacturing,]~~
12 processing, assembling, or production of any property, including activities~~[the~~
13 ~~processing]~~ that result~~[results]~~ in a change in the condition of the property.
14 **"Manufacturing" includes**~~[and]~~ any~~[related]~~ activity or function **related to the**
15 **manufacturing activity, including**~~[, together with the]~~ storage, warehousing,
16 distribution, and related office facilities;

17 ~~(15)~~⁽¹¹⁾ "Preliminary approval" means the action taken by the authority designating an
18 eligible company as a preliminarily approved company~~[, and conditioning final~~
19 ~~approval by the authority upon satisfaction by the eligible company of the~~
20 ~~requirements set forth in the preliminary approval];~~

21 ~~(16)~~⁽¹²⁾ "Reinvestment agreement"~~[or "agreement"]~~ means the agreement entered into
22 pursuant to KRS 154.34-080 between~~[on behalf of]~~ the authority and an approved
23 company with respect to a reinvestment project; **and**

24 ~~(17)~~⁽¹³⁾ "Reinvestment project"~~[or "project"]~~ means:
25 **(a) A reinvestment in the physical plant of a manufacturing facility, and in the**
26 **full-time employees of a manufacturing facility, through;**

1 1. The acquisition, construction, and installation of new equipment and,
2 with respect thereto, the construction, rehabilitation, and installation of
3 improvements to facilities necessary to house the~~[acquisition,~~
4 ~~construction, and installation of]~~ new equipment, including surveys;
5 installation of utilities including water, sewer, sewage treatment, gas,
6 electricity, communications, and similar facilities; off-site construction
7 of utility extensions to the boundaries of the real estate on which the
8 facilities are located; and

9 2. The development of an occupational training program to train or
10 retrain the full-time employees of the company to support the
11 reinvestment in the manufacturing facility, if applicable, for the
12 purpose of improving~~[shall contain eligible costs of not less than one~~
13 ~~hundred million dollars (\$100,000,000), all of which are utilized to~~
14 ~~improve]~~ the economic and operational situation of a~~[an approved]~~
15 ~~company[to allow the approved company to reinvest in its operations~~
16 ~~and retain or create jobs within the Commonwealth];~~ and

17 (b) The expenditure of at least two million five hundred thousand dollars
18 (\$2,500,000) in eligible equipment and related costs

19 ~~[(14) "State agency" means any state administrative body, agency, department, or division~~
20 ~~as defined in KRS 42.010, or any board, commission, institution, or division~~
21 ~~exercising any function of the state which is not an independent municipal~~
22 ~~corporation or political subdivision;~~

23 ~~(15) "Kentucky gross profits" means Kentucky gross profits as defined in KRS~~
24 ~~141.0401; and~~

25 ~~(16) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS~~
26 ~~141.0401].~~

1 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 34 OF KRS CHAPTER
2 154 IS CREATED TO READ AS FOLLOWS:

3 (1) The purpose of this subchapter is to provide a means for the Commonwealth to
4 promote job retention by providing incentives for existing businesses to reinvest
5 in existing manufacturing operations in Kentucky.

6 (2) (a) To qualify for the incentives provided in this subchapter, an approved
7 company shall:

8 1. Incur eligible equipment and related costs of at least two million five
9 hundred thousand dollars (\$2,500,000);

10 2. Agree to maintain a full-time employment base of at least eighty-five
11 percent (85%) at the facility on the date of preliminary approval; and

12 3. Not have been awarded incentives under Subchapter 26 of this chapter
13 for a period of at least five (5) years prior to applying for incentives
14 under this subchapter.

15 (b) An approved company meeting the expenditure and employment retention
16 requirements established by this subsection shall be eligible to recover up to
17 fifty percent (50%) of the amount expended for eligible equipment and
18 related costs, and up to one hundred percent (100%) of job skills upgrade
19 training costs. The actual amount that an approved company may recover
20 shall be negotiated with the authority, and may be less than the maximum
21 amount for which the approved company is eligible.

22 (3) An approved company shall be eligible for tax incentives of up to one hundred
23 percent (100%) of the Kentucky income tax imposed under KRS 141.020 or
24 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the
25 income, Kentucky gross profits, or Kentucky gross receipts of the approved
26 company generated by or arising from the eligible project, as set forth in Section
27 5 of this Act.

1 (4) The General Assembly finds and declares that:

2 (a) The general welfare and material well-being of the citizens of the
3 Commonwealth depend in large measure upon the reinvestment and
4 development of existing industry in the Commonwealth;

5 (b) It is in the best interest of the Commonwealth to induce reinvestment in
6 existing manufacturing facilities within the Commonwealth in order to
7 advance the public purposes of relieving unemployment by preserving jobs
8 that may be lost if not for the incentives to be offered by the authority to
9 approved companies, and by preserving and creating sources of tax
10 revenues for the support of public services provided by the Commonwealth;
11 and

12 (c) The authority prescribed by this subchapter and the purposes to be
13 accomplished under this subchapter are proper governmental and public
14 purposes for which public moneys may be expended.

15 ➔ Section 3. KRS 154.34-070 is amended to read as follows:

16 (1) The application and approval process under this subchapter shall be as follows:

17 (a) An eligible company with a proposed reinvestment project may submit an
18 application to the authority. The application shall include the information
19 required by subsection (4) of this section;

20 (b) Upon review of the application and any additional information submitted,
21 the authority may, by resolution, give preliminary approval to a
22 reinvestment project and authorize the negotiation and execution of a
23 memorandum of agreement. The memorandum of agreement shall
24 establish the minimum job retention requirements and maximum total
25 approved cost for the reinvestment project, shall only allow the recovery of
26 costs incurred after preliminary approval, and may include any other terms
27 as agreed to by the parties to the agreement. Upon preliminary approval, the

1 preliminarily approved company may undertake the project in accordance
2 with the memorandum of agreement;

3 (c) The preliminarily approved company shall submit any documentation
4 required by the authority upon request of the authority;

5 (d) The preliminarily approved company shall have up to three (3) years from
6 the date of preliminary approval to obtain final approval. Upon the earlier
7 of completion of the project or the passage of three (3) years from the date
8 of preliminary approval, the preliminarily approved company shall submit
9 documentation required by the authority, and the authority shall confirm
10 that the minimum investment and job retention requirements established by
11 the memorandum of agreement have been met. Upon review and
12 confirmation of the documentation, the authority may, by resolution, give
13 final approval to the preliminarily approved company, and authorize the
14 execution of a reinvestment agreement between the authority and the
15 approved company pursuant to Section 4 of this Act. As part of the
16 reinvestment agreement, the approved costs shall be finally determined, not
17 to exceed the maximum approved costs as determined at preliminary
18 approval, and the approved company shall be eligible to receive incentives
19 in accordance with the provisions of the reinvestment agreement;

20 (e) The authority shall monitor the reinvestment agreement at least annually,
21 and the approved company shall submit all documentation necessary for the
22 authority to monitor the agreement. The authority shall, based on the
23 documentation provided, confirm that the approved company is in
24 continued compliance with the provisions of the reinvestment agreement
25 and, therefore, eligible for incentives; and

26 (f) Upon final approval, the authority shall notify the department that an
27 approved company is eligible for incentives and shall provide the

department with the information necessary to monitor the use of credits by the approved company. If, at any time during the term of the reinvestment agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of credits for the approved company.

(2) The authority may establish standards for ~~the determination and~~ preliminary **and final** approval of eligible companies and their projects ~~through~~**by** the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

~~**(3)**~~**(2)** The criteria for preliminary **and final** approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible **equipment and other** costs **and eligible skills upgrade training costs** to be expended by the eligible company, and the number of ~~employees whose~~ jobs ~~are to be~~ created or retained as a result of the project.

~~**(4)**~~**(3)** **The application**~~Each eligible company making an application to the authority for inducements~~ shall **include:**~~in a manner acceptable to the authority,~~

(a) A description of~~describe~~ the condition of the existing facility, including but not limited to **the status of the physical plant, the** financial **situation of the company, and the**~~efficiency~~ and productivity **of the facility**~~matters~~;

(b) A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary~~explain the reasons required for reinvestment in the facility~~;

(c) A timeline for~~identify the time schedule of~~ the proposed **reinvestment** project;

1 (d) A description of the other~~[set out]~~ alternatives that are available to the
2 eligible company, if incentives are not provided;

3 (e) The amount of incentives sought, and an explanation of why the requested
4 incentives are needed;

5 (f) A certification from the company that the reinvestment project would not be
6 economically feasible for the company, but for the incentives available
7 under this subchapter;

8 (g) Payment of any applicable application fees required by the authority;
9 and~~[explain the need for the inducements for the eligible company to~~
10 ~~undertake the project; and provide]~~

11 (h) Any additional information relating to the proposed reinvestment project
12 that~~[as]~~ the authority may require.

13 (5) The authority may request any materials and make any inquiries concerning an
14 application that the authority deems necessary~~[(4) — After a review of relevant~~
15 ~~materials and completion of inquiries, the authority may, by resolution, give its~~
16 ~~preliminary approval by designating an eligible company as a preliminarily~~
17 ~~approved company and authorize a conditional undertaking of the project pursuant~~
18 ~~to a memorandum of agreement negotiated between the eligible company and the~~
19 ~~authority.~~

20 ~~(5) — The preliminarily approved company shall, in a manner acceptable to the authority~~
21 ~~and at certain times as the authority may require, provide documentation relating to~~
22 ~~the eligible costs expended or obligated in connection with the project. The~~
23 ~~authority shall review the preliminarily approved company's progress in connection~~
24 ~~with the project to determine if the conditions set forth in the memorandum of~~
25 ~~agreement have been met.~~

26 ~~(6) — After July 1, 2004, and upon a review of the documentation relating to the~~
27 ~~preliminarily approved company's compliance under the memorandum of~~

1 ~~agreement, the authority, by resolution, may give its final approval to the~~
2 ~~preliminarily approved company's application for a reinvestment project and may~~
3 ~~grant to the preliminarily approved company the status of an approved company.~~

4 ~~(7) All meetings of the authority shall be held in accordance with KRS 61.805 to~~
5 ~~61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its~~
6 ~~meetings to discuss matters exempt from the open meetings law and pertaining to~~
7 ~~an eligible company}.~~

8 ➔Section 4. KRS 154.34-080 is amended to read as follows:

9 The authority, upon~~[adoption of its]~~ final approval **of a company**, may enter into **a**
10 **reinvestment agreement with the approved company. The terms and conditions of the**
11 **reinvestment agreement shall be negotiated between the authority and the approved**
12 **company**~~[with any approved company a reinvestment agreement with respect to its~~
13 ~~project]. The terms **of the** and provisions of each agreement, including the amount of~~
14 ~~approved costs, shall be determined by negotiations between the authority and the~~
15 ~~approved company, except that each] reinvestment agreement shall include **but not be**~~
16 **limited to** the following provisions:

17 (1) **That**~~[The agreement shall set a date by which the approved company will have~~
18 ~~completed the project. Within three (3) months of the completion date, the approved~~
19 ~~company shall document its expenditures of the eligible costs attributable to the~~
20 ~~project in a manner acceptable to the authority.] the authority may employ an~~
21 ~~independent consultant or utilize technical resources to verify the cost of the project,~~
22 **and that**~~[.] the approved company shall reimburse the authority for the cost of a~~
23 ~~consultant or other technical resources employed by the authority;~~

24 **(2) The maximum approved costs that may be recovered;**

25 **(3) A set employment retention goal, which shall be at least eighty-five percent (85%)**
26 **of the number of full-time employees employed at the facility on the date the**
27 **company receives preliminary approval;**

1 **(4) That approval of the company is not a guarantee of incentives and that eligibility**
2 **for incentives shall be contingent on the approved company meeting the**
3 **requirements established by the reinvestment agreement and this subchapter;**

4 ~~[(2) In consideration of the execution of the agreement between the authority and~~
5 ~~approved company, the approved company may be permitted one (1) or both of the~~
6 ~~following inducements:~~

7 ~~(a) A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the~~
8 ~~income of the approved company generated by or arising out of the~~
9 ~~reinvestment project as determined under KRS 141.415, and a credit against~~
10 ~~the limited liability entity tax imposed by KRS 141.0401, with the ordering of~~
11 ~~credits as provided in KRS 141.0205;~~

12 ~~(b) A credit against the Kentucky license tax imposed by KRS 136.070 on the~~
13 ~~approved company as determined under KRS 141.416;~~

14 ~~(3) The total inducements authorized in the agreement for the benefits of the approved~~
15 ~~company shall be equal to the lesser of the total amount of the tax liability or the~~
16 ~~approved costs that have not yet been recovered. The inducements shall be allowed~~
17 ~~for each fiscal year of the approved company during the term of the agreement and~~
18 ~~for which a tax return of the approved company is filed. The approved company~~
19 ~~shall not be required to pay estimated tax payments as prescribed under KRS~~
20 ~~141.044 or 141.305 on income, Kentucky gross profits, or Kentucky gross receipts~~
21 ~~from the project;]~~

22 **(5)[(4)] The term of the reinvestment agreement, which** ~~agreement shall provide that~~
23 ~~the term]~~ shall not be longer than the earlier of:

24 (a) The date on which the approved company has received
25 **incentives**~~[inducements]~~ equal to the approved costs of its reinvestment
26 project; or

27 (b) Ten (10) years from the date of final approval granted by the authority;

1 (6) That the authority may reduce the incentives, suspend the incentives, or
2 terminate the agreement if the approved company fails to comply with provisions
3 of the reinvestment agreement;

4 (7) That both the authority and the department shall have the right to pursue any
5 remedy provided under this reinvestment agreement and any other remedy at law
6 to which it may be entitled;

7 ~~(8) [(5) — All eligible costs of the project shall be expended by the approved company~~
8 ~~within three (3) years from the date of final approval by the authority. In the event~~
9 ~~that all eligible costs of the project are not fully expended by the approved company~~
10 ~~within the three (3) year period, the authority is authorized to:~~

11 ~~(a) — Reduce the inducements; or~~

12 ~~(b) — Suspend the inducements; or~~

13 ~~(c) — Terminate the agreement;~~

14 ~~(6) — If the agreement is terminated, the authority may require the approved company to~~
15 ~~repay the Department of Revenue of the Commonwealth all or part of any~~
16 ~~inducements received by the approved company prior to the termination of the~~
17 ~~agreement;~~

18 ~~(7) — The agreement shall specify.]~~ That the approved company shall make available
19 to the department and the authority all of its records pertaining to the reinvestment
20 project, including but not limited to payroll records, records relating to the
21 expenditure of eligible equipment and related costs, eligible skills upgrade
22 training costs, and approved costs, and any other records pertaining to the project as
23 the authority or the department may require;

24 (9) That the authority may share information with the department for the purposes
25 of monitoring and enforcing the terms of the reinvestment agreement;

26 (10) That~~and (8) —]~~ the agreement shall not be transferred or assigned by the
27 approved company without the expressed written consent of the authority; and

1 (11) Any other provisions not inconsistent with this subchapter and determined to be
2 necessary or appropriate by the parties to the reinvestment agreement.

3 ➔SECTION 5. A NEW SECTION OF SUBCHAPTER 34 OF KRS CHAPTER
4 154 IS CREATED TO READ AS FOLLOWS:

5 (1) For taxable years beginning after December 31, 2009, an approved company may
6 be eligible for a nonrefundable credit of up to one hundred percent (100%) of the
7 Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited
8 liability entity tax imposed under KRS 141.0401 that would otherwise be owed by
9 the approved company to the Commonwealth for the approved company's tax
10 year, on the income, Kentucky gross profits, or Kentucky gross receipts of the
11 approved company generated by or arising from the reinvestment project.

12 (2) The credit allowed the approved company shall be applied against both the
13 income tax imposed by KRS 141.020 or 141.040, and the limited liability entity
14 tax imposed by KRS 141.0401, with credit ordering as provided in Section 30 of
15 this Act, for the tax year for which the tax return of the approved company is
16 filed. Any credit not used in the year in which it was first available may be carried
17 forward to subsequent years, provided that no credit may be carried forward
18 beyond the term of the reinvestment agreement.

19 (3) The approved company shall not be required to pay estimated tax payments as
20 prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross
21 receipts, or Kentucky gross profits generated by or arising from the eligible
22 project.

23 (4) The credit provided by this section shall be determined as provided in Section 31
24 of this Act.

25 (5) The amount of incentives allowed in any year shall not exceed the lesser of the
26 tax liability of the approved company related to the reinvestment project for that
27 taxable year or the approved costs that have not yet been recovered. The

incentives shall be allowed for each taxable year of the approved company during the term of the reinvestment agreement for which a tax return is filed by the approved company.

➔Section 6. KRS 154.34-090 is amended to read as follows:

By October 1 of each year, the Department of Revenue of the Commonwealth shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year by approved companies with respect to their reinvestment projects under *this subchapter*~~[KRS 154.34-010 to 154.34-100,]~~ 141.415~~[, and 141.416,]~~ and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state tax return, when an approved company has taken inducements equal to its approved costs.

➔Section 7. Notwithstanding the amendments contained in Sections 1 to 6 of this Act, all reinvestment projects preliminarily approved on or after the effective date of this Act shall not be eligible for final approval until after July 1, 2010.

➔Section 8. Notwithstanding the amendments contained in Sections 1 to 6 of this Act, or repealers contained in Section 71 of this Act, all reinvestment projects preliminarily or finally approved prior to the effective date of this Act shall be governed by Subchapter 34 of KRS Chapter 154 as it existed prior to the effective date of this Act.

➔SECTION 9. SUBCHAPTER 32 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subchapter:

(1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;

(2) "Advance disbursement" means the disbursement of incentives prior to the activation date;

(3) "Affiliate" has the same meaning as in KRS 154.48-010, and in addition shall include two (2) or more limited liability companies if the same persons own more

- 1 than fifty percent (50%) of the capital interest or are entitled to more than fifty
2 percent (50%) of the capital profits in the limited liability companies;
- 3 (4) "Agribusiness" means the processing of raw agricultural products, including
4 timber, or the performance of value-added functions with regard to raw
5 agricultural products;
- 6 (5) "Approved company" means an eligible company that has received final
7 approval to receive incentives under this subchapter;
- 8 (6) "Approved costs" means the amount of eligible costs approved by the authority at
9 final approval;
- 10 (7) "Authority" means the Kentucky Economic Development Finance Authority
11 established by KRS 154.20-010;
- 12 (8) "Capital lease" means a lease classified as a capital lease by the Statement of
13 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
14 Financial Accounting Standards Board, November 1976, as amended;
- 15 (9) "Commonwealth" means the Commonwealth of Kentucky;
- 16 (10) "Confirmed approved costs" means:
- 17 (a) For owned economic development projects, the documented eligible costs
18 incurred on or before the activation date; or
- 19 (b) For leased economic development projects:
- 20 1. The documented eligible costs incurred on or before the activation
21 date; and
- 22 2. Estimated rent to be incurred by the approved company throughout
23 the term of the tax incentive agreement.
- 24 For both owned and leased economic development projects, "confirmed approved
25 costs" may be less than approved costs, but shall not be more than approved
26 costs;
- 27 (11) "Department" means the Department of Revenue;

1 (12) "Economic development project" means:

2 (a) 1. The acquisition, leasing, or construction of a new facility; or

3 2. The acquisition, leasing, rehabilitation, or expansion of an existing
4 facility; and

5 (b) The installation and equipping of the facility;

6 by an eligible company. "Economic development project" does not include any
7 economic development project that will result in the replacement of facilities
8 existing in the Commonwealth, except as provided in Section 14 of this Act;

9 (13) (a) "Eligible company" means any corporation, limited liability company,
10 partnership, limited partnership, sole proprietorship, business trust, or any
11 other entity with a proposed economic development project that is engaged
12 in or is planning to be engaged in one (1) or more of the following activities
13 within the Commonwealth:

14 1. Manufacturing;

15 2. Agribusiness;

16 3. Nonretail service or technology; or

17 4. National or regional headquarters operations regardless of the
18 underlying business activity of the company.

19 (b) "Eligible company" does not include companies where the primary activity
20 to be conducted within the Commonwealth is forestry, fishing, mining, coal
21 or mineral processing, the provision of utilities, construction, wholesale
22 trade, retail trade, real estate, rental and leasing, educational services,
23 accommodation and food services, or public administration services;

24 (14) "Eligible costs" means:

25 (a) For owned economic development projects:

26 1. Start-up costs;

- 1 2. Obligations incurred for labor and amounts paid to contractors,
2 subcontractors, builders, and materialmen in connection with the
3 economic development project;
- 4 3. The cost of acquiring land or rights in land and any cost incidental
5 thereto, including recording fees;
- 6 4. The cost of contract bonds and of insurance of all kinds that may be
7 required or necessary for completion of an economic development
8 project which is not paid by a contractor or otherwise provided for;
- 9 5. All costs of architectural and engineering services, including test
10 borings, surveys, estimated plans and specifications, preliminary
11 investigations, and supervision of construction, as well as for the
12 performance of all the duties required for construction of the
13 economic development project;
- 14 6. All costs which are required to be paid under the terms of any contract
15 for the economic development project;
- 16 7. All costs incurred for construction activities, including site tests and
17 inspections; subsurface site work; excavation; removal of structures,
18 roadways, cemeteries, and other surface obstructions; filling, grading,
19 and providing drainage and storm water retention; installation of
20 utilities such as water, sewer, sewage treatment, gas, electric,
21 communications, and similar facilities; off-site construction of utility
22 extensions to the boundaries of the real estate; construction and
23 installation of railroad spurs as needed to connect the economic
24 development project to existing railways; or similar activities as the
25 authority may determine necessary for construction of the economic
26 development project; and
- 27 8. All other costs of a nature comparable to those described above; and

1 **(b) For leased economic development projects:**

2 **1. Start-up costs; and**

3 **2. Fifty percent (50%) of the estimated annual rent for each year of the**
4 **tax incentive agreement.**

5 **Notwithstanding any other provision of this subsection, for economic**
6 **development projects that are not in enhanced incentive counties, the cost of**
7 **equipment eligible for recovery as an eligible cost shall not exceed twenty**
8 **thousand dollars (\$20,000) for each new full-time job created as of the activation**
9 **date;**

10 **(15) "Employee benefits" means nonmandated payments by an approved company for**
11 **its full-time employees for health insurance, life insurance, dental insurance,**
12 **vision insurance, defined benefits, 401(k), or similar plans;**

13 **(16) "Enhanced incentive counties" means counties certified by the authority**
14 **pursuant to Section 13 of this Act;**

15 **(17) "Final approval" means the action taken by the authority authorizing the eligible**
16 **company to receive incentives under this subchapter;**

17 **(18) "Full-time job" means a job held by a person who:**

18 **(a) Is a Kentucky resident subject to the Kentucky individual income tax**
19 **imposed by KRS 141.020; and**

20 **(b) Is required to work a minimum of thirty-five (35) hours per week;**

21 **(19) "Incentives" means the incentives available under this subchapter, as listed in**
22 **subsection (3) of Section 10 of this Act;**

23 **(20) "Job target" means the annual average number of new full-time jobs that the**
24 **approved company commits to create and maintain at the economic development**
25 **project, which shall not be less than ten (10) new full-time jobs;**

26 **(21) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;**

27 **(22) "Kentucky gross profits" has the same meaning as in KRS 141.0401;**

1 (23) "Lease agreement" means an agreement between an approved company and an
2 unrelated entity conveying the right to use property, plant, or equipment, the
3 terms of which reflect an arms' length transaction. "Lease agreement" does not
4 include a capital lease;

5 (24) "Leased project" means an economic development project site occupied by an
6 approved company pursuant to a lease agreement;

7 (25) "Loan agreement" means the agreement between the authority and a
8 preliminarily approved company establishing the terms and conditions of an
9 advance disbursement;

10 (26) "Manufacturing" means any activity involving the processing, assembling, or
11 production of any property, including the processing resulting in a change in the
12 conditions of the property and any activity related to the processing, assembling,
13 or production of property. "Manufacturing" also includes storage, warehousing,
14 distribution, and office activities related to the manufacturing activity;

15 (27) "Minimum wage target" means the average minimum wage amount that the
16 approved company commits to meet for all new full-time jobs created and
17 maintained as a result of the economic development project, which shall not be
18 less than:

19 (a) One hundred fifty percent (150%) of the federal minimum wage in
20 enhanced incentive counties; or

21 (b) One hundred seventy-five percent (175%) of the federal minimum wage in
22 all other counties;

23 (28) (a) "Nonretail service or technology" means any activity where:

24 1. Service or technology is:

25 a. Provided predominantly outside the Commonwealth; and

26 b. Designed to serve a multistate, national, or international market;

27 or

1 2. Service or technology is provided by a national or regional
2 headquarters as a support to other business activities conducted by the
3 eligible company.

4 (b) "Nonretail service or technology" includes but is not limited to call centers,
5 centralized administrative or processing centers, telephone or Internet sales
6 order or processing centers, distribution or fulfillment centers, data
7 processing centers, research and development facilities, and other similar
8 activities;

9 (29) "Owned project" means an economic development project owned in fee simple by
10 the approved company or an affiliate, or possessed by the approved company or
11 an affiliate pursuant to a capital lease;

12 (30) "Preliminary approval" means the action taken by the authority preliminarily
13 approving an eligible company for incentives under this subchapter;

14 (31) "Rent" means the actual annual rent or fee paid by an approved company under
15 a lease agreement;

16 (32) "Start-up costs" means costs incurred to furnish and equip a facility for an
17 economic development project, including costs incurred for:

18 (a) Computers, furnishings, office equipment, manufacturing equipment, and
19 fixtures;

20 (b) The relocation of out-of-state equipment; and

21 (c) Nonrecurring costs of fixed telecommunications equipment;
22 as certified to the authority in accordance with Section 11 of this Act;

23 (33) "Tax incentive agreement" means the agreement entered into pursuant to
24 Section 12 of this Act between the authority and an approved company; and

25 (34) "Term" means the period of time for which a tax incentive agreement may be in
26 effect, which shall not exceed fifteen (15) years for an economic development

1 project located in an enhanced incentive county, or ten (10) years for an
2 economic development project not located in any other county.

3 ➔SECTION 10. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
4 154 IS CREATED TO READ AS FOLLOWS:

5 (1) The purposes of this subchapter are:

6 (a) To provide incentives for eligible companies and to encourage the location
7 or expansion of manufacturing facilities, agribusiness operations, nonretail
8 service or technology facilities, and regional or national corporate
9 headquarters in the Commonwealth to advance the public purposes of:

10 1. Creation of new jobs that, but for the incentives offered by the
11 authority, would not exist within the Commonwealth;

12 2. Creation of new sources of tax revenues for the support of public
13 services provided by the Commonwealth; and

14 3. Improvement in the quality of life for Kentucky citizens through the
15 creation of sustainable jobs with higher salaries; and

16 (b) To provide enhanced incentives for companies that locate in enhanced
17 incentive counties in recognition of the depressed economic conditions in
18 those counties and the increased need for the growth and development
19 caused by the depressed economic conditions.

20 (2) (a) To qualify for the incentives provided by subsection (3) of this section, an
21 approved company shall:

22 1. Incur eligible costs of at least one hundred thousand dollars
23 (\$100,000);

24 2. Create at least ten (10) new full-time jobs and maintain an annual
25 average number of at least ten (10) new full-time jobs; and

26 3. a. Pay an average minimum wage for all new full-time jobs of at
27 least one hundred fifty percent (150%) of the federal minimum

1 wage in enhanced incentive counties, and one hundred seventy-
2 five percent (175%) of the federal minimum wage in other
3 counties throughout the term of the economic development
4 project; and

5 b. Provide employee benefits for all new full-time jobs equal to at
6 least fifteen percent (15%) of the minimum wage target
7 established by the tax incentive agreement. If the eligible
8 company does not provide employee benefits equal to at least
9 fifteen percent (15%) of the minimum wage target established by
10 the tax incentive agreement, the eligible company may still
11 qualify for incentives if it provides the full-time employees hired
12 as a result of the economic development project total hourly
13 compensation equal to or greater than one hundred fifteen
14 percent (115%) of the minimum wage target established in the
15 tax incentive agreement through increased hourly wages
16 combined with employee benefits.

17 (b) To qualify for the advance disbursement provided by Section 17 of this Act,
18 an approved company shall commit to meeting the job and wage
19 requirements established by paragraph (a) of this subsection, and shall
20 provide documentation indicating that the proposed economic development
21 project will require investment of at least five hundred million dollars
22 (\$500,000,000).

23 (3) The incentives available under this subchapter are as follows:

24 (a) Tax credits of up to one hundred percent (100%) of the Kentucky income
25 tax imposed under KRS 141.020 or 141.040 and the limited liability entity
26 tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or
27 Kentucky gross receipts of the approved company generated by or arising

1 from the economic development project, as set forth in Sections 16 and 31
2 of this Act;

3 (b) Authorization for the approved company to impose a wage assessment
4 against the gross wages of each new employee subject to the Kentucky
5 income tax as provided in Section 18 of this Act; and

6 (c) For economic development projects with an investment of more than five
7 hundred million dollars (\$500,000,000), an advance disbursement as
8 provided in Section 17 of this Act.

9 (4) The General Assembly hereby finds and declares that the authority granted in
10 this subchapter and the purposes accomplished hereby are proper governmental
11 and public purposes for which public moneys may be expended, and that the
12 inducement of the location of economic development projects within the
13 Commonwealth is of paramount importance to the economic well-being of the
14 Commonwealth.

15 ➔SECTION 11. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
16 154 IS CREATED TO READ AS FOLLOWS:

17 (1) The application, approval, and review process under this subchapter shall be as
18 follows:

19 (a) An eligible company with a proposed economic development project may
20 submit an application to the authority. The application shall include the
21 information required by subsection (3) of this section;

22 (b) 1. Upon review of the application and any additional information
23 submitted, the authority may, by resolution, give preliminary approval
24 to an eligible company and authorize the negotiation and execution of
25 a memorandum of agreement. The memorandum of agreement shall
26 establish a preliminary job target, minimum wage target, including
27 employee benefits, and maximum total approved cost for the economic

1 development project, and shall only allow the recovery of eligible costs
2 incurred after preliminary approval. Upon preliminary approval, the
3 preliminarily approved company may undertake the project in
4 accordance with the memorandum of agreement, and may begin to
5 hire employees that may be counted toward the minimum full-time job
6 requirements established by the memorandum of agreement.

7 2. If the preliminary approval includes an advance disbursement, a
8 separate loan agreement shall also be negotiated establishing the
9 terms for the advance disbursement in accordance with the provisions
10 of Section 17 of this Act;

11 (c) After preliminary approval but before final approval, the authority shall
12 post the preliminarily approved company's name, the location of the
13 economic development project, and the incentives that have been
14 preliminarily approved on the Cabinet for Economic Development's Web
15 site;

16 (d) The preliminarily approved company shall submit any documentation
17 required by the authority upon request of the authority;

18 (e) To obtain final approval, the preliminarily approved company shall submit:

19 1. Documentation required by the authority to confirm that the
20 requirements established by the memorandum of agreement have been
21 met; and

22 2. Documentation of official action taken by a local governmental entity
23 detailing the manner and level of local contribution, if applicable.

24 Upon review and confirmation of the documentation, the authority may, by
25 resolution, give final approval to the preliminarily approved company, and
26 authorize the execution of a tax incentive agreement between the authority
27 and the approved company pursuant to Section 12 of this Act. The tax

1 incentive agreement shall establish an activation date, which shall be within
2 two (2) years of final approval;

3 (f) 1. On or before the activation date, the approved company shall notify
4 the authority of its intention to activate the tax incentive agreement.

5 The approved company shall submit:

6 a. Documentation that it has met the minimum full-time job,
7 minimum investment, and minimum wage and employee benefits
8 requirements established by Section 10 of this Act as of the date
9 of activation; and

10 b. The confirmed approved costs incurred as of the date of
11 activation, which shall be the total eligible costs that may be
12 recovered by the approved company.

13 2. If the approved company fails to meet any of the minimum investment,
14 full-time job, or wage requirements, including employee benefits,
15 established by Section 10 of this Act on the activation date, the tax
16 incentive agreement shall be canceled and the approved company
17 shall not be eligible for incentives.

18 3. If an approved company meets the minimum investment, full-time job,
19 and wage requirements, including employee benefits, established by
20 Section 10 of this Act, but fails to meet higher job targets and
21 minimum wage targets, including employee benefits, established in the
22 tax incentive agreement, then the provisions of subsection (4) of this
23 section shall apply in determining the incentives for which the
24 approved company qualifies.

25 4. Upon activation of a tax incentive agreement, the authority shall
26 notify the department, and shall provide the department with the

1 information necessary to monitor and track the incentives taken by the
2 approved company; and

3 (g) 1. The authority shall monitor the tax incentive agreement at least
4 annually, and the approved company shall submit all documentation
5 necessary for the authority to monitor the agreement.

6 2. The authority shall, based on the documentation provided, confirm
7 that the approved company is in continued compliance with the
8 provisions of the tax incentive agreement and, therefore, eligible for
9 incentives.

10 3. Upon annual review, if the approved company meets the minimum job
11 and wage requirements, including employee benefits, established by
12 Section 10 of this Act, but fails to meet the job target and minimum
13 wage target, including employee benefits, established in the tax
14 incentive agreement, then the provisions of subsection (4) of this
15 section shall apply in determining the incentives for which the
16 approved company qualifies in any year.

17 4. Upon final approval, the authority shall notify the department that an
18 approved company is eligible for incentives and shall provide the
19 department with the information necessary to monitor the use of
20 incentives by the approved company. If, at any time during the term of
21 the tax incentive agreement, an approved company becomes ineligible
22 for incentives, the authority shall notify the department, and the
23 department shall discontinue the availability of incentives for the
24 approved company.

25 (2) (a) The authority may establish procedures and standards for the review and
26 approval of eligible companies and their economic development projects

1 through the promulgation of administrative regulations in accordance with
2 KRS Chapter 13A.

3 (b) Standards to be used by the authority in reviewing and approving an eligible
4 company and its economic development project shall include but not be
5 limited to:

6 1. The creditworthiness of the eligible company;

7 2. The proposed capital investment to be made;

8 3. The number of new full-time jobs to be provided for the residents of
9 the Commonwealth and the wages to be paid;

10 4. Support of the local community; and

11 5. The likelihood of the economic success of the economic development
12 project.

13 (3) The application shall include but not be limited to:

14 (a) The name of the applicant and identification of any affiliates of the
15 applicant who will have some relation to the economic development project;

16 (b) A description of the economic development project, including its location,
17 the total investment in the economic development project, and total
18 proposed eligible costs;

19 (c) The projected number of new full-time jobs to be created as a result of the
20 economic development project and identification of any affiliates who may
21 employ persons hired to fill those jobs;

22 (d) The number of existing full-time jobs at the site of the economic
23 development project on the date of the application and a description and
24 breakdown of the relevant affiliated employers;

25 (e) Proposed wage and employee benefit amounts for the new full-time jobs to
26 be created as a result of the proposed economic development project;

- 1 (f) For proposed economic development projects new to the Commonwealth,
2 certification by the eligible company that the economic development project
3 could reasonably and efficiently locate outside of the Commonwealth and,
4 without the incentives offered by the authority, the eligible company would
5 likely locate outside the Commonwealth;
- 6 (g) For eligible companies with an existing location in the Commonwealth
7 considering an expansion, certification that the tax incentives are necessary
8 for the expansion to occur;
- 9 (h) A letter of support from a local governmental entity in the city or county
10 where the economic development project will be located; and
- 11 (i) Any other information the authority may require.
- 12 (4) (a) An approved company that meets the minimum job and wage requirements,
13 including employee benefits, established by Section 10 of this Act, but fails
14 to meet the job target and minimum wage target, including employee
15 benefits, established by the tax incentive agreement shall be eligible to
16 receive the incentives authorized by the tax incentive agreement as provided
17 in this subsection.
- 18 (b) If, upon activation or annual review, an approved company achieves at least
19 ninety percent (90%) of both the job target and minimum wage target,
20 including employee benefits, established by the tax incentive agreement and
21 no other default has occurred, then the approved company shall be eligible
22 to receive full incentives as provided in the tax incentive agreement.
- 23 (c) If, upon activation or annual review, an approved company achieves less
24 than ninety percent (90%) of either the job target or minimum wage target,
25 including employee benefits, established in the tax incentive agreement and
26 no other default has occurred, then the incentives available to the approved
27 company for the following year shall be reduced by a percentage equal to

1 the percentage representing the difference between the job target or
2 minimum wage target, including employee benefits, established in the tax
3 incentive agreement, and the actual average number of full-time jobs or
4 average wage, including employee benefits, paid. If both the number of
5 actual average full-time jobs and average wages paid, including employee
6 benefits, are below ninety percent (90%) of the targets on the same
7 measurement date, then the greater percentage reduction of the two (2)
8 shall be applied rather than reducing the incentives available by the sum of
9 the two (2).

10 (d) If, upon annual review, either the actual number of new full-time jobs or
11 the average wages paid for those jobs, including employee benefits, is less
12 than the minimum requirements established by Section 10 of this Act, then
13 the economic development project may be suspended automatically or, with
14 approval of the authority, terminated.

15 ➔SECTION 12. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
16 154 IS CREATED TO READ AS FOLLOWS:

17 The authority, upon final approval of a company, may enter into a tax incentive
18 agreement with the approved company. The terms and conditions of the tax incentive
19 agreement shall be negotiated between the authority and the approved company. The
20 terms of the tax incentive agreement shall include but not be limited to the following
21 provisions:

22 (1) The maximum approved costs that may be recovered over the term of the tax
23 incentive agreement and the annual maximum for approved costs;

24 (2) That the approved company shall provide the authority with all documentation
25 requested in a manner acceptable to the authority;

26 (3) Identification of the contribution of the local government to the economic
27 development project, if any;

- 1 (4) The activation date, which shall be within two (2) years of final approval;
- 2 (5) That the approved company shall implement the activation date by notifying the
3 authority;
- 4 (6) That the approved company shall provide documentation satisfactory to the
5 authority within the timeframes required by the authority that it has met the
6 minimum employment, minimum investment, and minimum wage requirements,
7 including employee benefits, established by Section 10 of this Act;
- 8 (7) That failure of the approved company to meet any of the minimum job, minimum
9 investment, or minimum wage requirements, including employee benefits,
10 established by Section 10 of this Act on the activation date shall result in
11 cancellation of the tax incentive agreement;
- 12 (8) The term of the agreement, which shall not exceed fifteen (15) years for an
13 economic development project located in an enhanced incentive county, or ten
14 (10) years for an economic development project located in another county;
- 15 (9) That, if confirmed approved costs are less than the maximum approved costs
16 included in the tax incentive agreement, the confirmed approved costs shall
17 become the maximum amount that may be recovered by the approved company;
- 18 (10) If the economic development project is a leased project, that future rent payments
19 that are included in eligible costs shall be included as confirmed approved costs
20 upon submission of a valid lease agreement executed after preliminary approval;
- 21 (11) Establishment of a job target and minimum wage target, including employee
22 benefits;
- 23 (12) A requirement that the job target and minimum wage target, including employee
24 benefits, be measured:
- 25 (a) On the activation date, against the actual new full-time jobs created and the
26 average wages, including employee benefits, paid for those jobs; and

- 1 (b) Annually during each year of the agreement, against the annual average of
2 the new full-time jobs and the average wages paid for those jobs, including
3 employee benefits;
- 4 (13) A provision requiring the approved company to notify the authority immediately
5 if the approved company sells or otherwise transfers or disposes of the land on
6 which an economic development project is located, if a lease relating to the
7 economic development project is terminated or lapses, or if the approved
8 company ceases or fundamentally alters operations at the economic development
9 project;
- 10 (14) A provision detailing the reductions in incentives that will occur pursuant to
11 subsection (4) of Section 11 of this Act if an approved company fails to meet its
12 job target or minimum wage target, including employee benefits;
- 13 (15) If the tax incentive agreement includes an advance disbursement, incorporation
14 of the provisions of the loan agreement or inclusion of the loan agreement as an
15 attachment to the tax incentive agreement;
- 16 (16) That the agreement may be assigned by the approved company upon the adoption
17 of a resolution by the authority to that effect;
- 18 (17) That the approved company shall make available to the authority all of its records
19 pertaining to the economic development project, including but not limited to
20 payroll records, records relating to eligible costs, and any other records
21 pertaining to the economic development project that the authority may require;
- 22 (18) That the authority may share information with the department for the purposes
23 of monitoring and enforcing the terms of the tax incentive agreement;
- 24 (19) That, if an approved company fails to comply with its obligations under the tax
25 incentive agreement other than the jobs target or minimum wage target, the
26 authority may take any or all of the following actions:
- 27 (a) Suspend the incentives available to the approved company;

1 (b) Terminate the incentives available to the approved company; or
2 (c) Pursue any other remedy set forth in the tax incentive agreement or to
3 which it may be entitled by law; and
4 (20) Any other provisions not inconsistent with this subchapter and determined to be
5 necessary or appropriate by the parties to the tax incentive agreement.
6 ➔SECTION 13. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
7 154 IS CREATED TO READ AS FOLLOWS:
8 (1) The authority shall identify and certify or decertify enhanced incentive counties
9 on an annual basis as provided in this section.
10 (2) Each fiscal year, the authority shall:
11 (a) Obtain from the Office of Employment and Training within the Department
12 of Workforce Investment in the Education and Work Force Development
13 Cabinet, the final unemployment figures for the prior calendar year for
14 each county and for the Commonwealth as a whole;
15 (b) Identify those counties which have had:
16 1. A countywide unemployment rate that exceeds the statewide
17 unemployment rate in the most recent five (5) consecutive calendar
18 years; or
19 2. An average countywide rate of unemployment exceeding the statewide
20 unemployment rate by two hundred percent (200%) in the most recent
21 calendar year; and
22 (c) Certify the counties identified in paragraph (b) of this subsection as
23 enhanced incentive counties.
24 (3) A county not certified under subsection (2) of this section may also be certified by
25 the authority as an enhanced incentive county if the authority determines the
26 county is one (1) of the sixty (60) most distressed counties in the Commonwealth
27 based on the following criteria with equal weight given to each criterion:

- 1 (a) The average countywide rate of unemployment in the most recent three (3)
2 consecutive calendar years, using the information obtained under
3 subsection (2)(a) of this section;
- 4 (b) The percentage of adults twenty-five (25) years of age and older who have
5 attained at least a high school education or equivalent, on the basis of the
6 most recent data available from the United States Department of
7 Commerce, Bureau of the Census; and
- 8 (c) The quality of the roads in the county. Quality of roads shall be determined
9 by the access within a county to roads, ranked in descending order from
10 best quality to worst quality, as certified to the authority by the Kentucky
11 Transportation Cabinet as follows:
- 12 1. Two (2) or more interstate highways;
13 2. One (1) interstate highway;
14 3. A state four (4) lane parkway;
15 4. A four (4) lane principal arterial access to an interstate highway;
16 5. A state two (2) lane parkway; and
17 6. None of the preceding road types.
- 18 (4) (a) If the authority determines that an enhanced incentive county no longer
19 meets the criteria to be certified as an enhanced incentive county under this
20 section, the authority shall decertify that county.
- 21 (b) Any economic development project located in an enhanced incentive county
22 that was decertified by the authority after May 1, 2009, shall have until July
23 1 of the third year following the fiscal year in which the county was
24 decertified to obtain final approval from the authority.
- 25 (5) (a) As used in this subsection, "industrial park" means a regional industrial
26 park as defined in KRS 42.4588, or an industrial park created pursuant to

1 an interlocal agreement in which revenues are shared as provided in KRS
2 65.245.

3 (b) An economic development project undertaken in an industrial park that is
4 located in two (2) or more counties, one (1) of which is an enhanced
5 incentive county, may be approved for the enhanced incentive county
6 incentives set forth in this subchapter.

7 ➔SECTION 14. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
8 154 IS CREATED TO READ AS FOLLOWS:

9 (1) The authority shall not approve an economic development project that otherwise
10 meets the requirements of this subchapter if the economic development project
11 will result in the replacement of facilities existing in the state except as provided
12 in this section.

13 (2) The authority may approve an economic development project that:

14 (a) Rehabilitates an existing facility used for manufacturing, agribusiness, or
15 nonretail service or technology, or as a national or regional corporate
16 headquarters, if:

17 1. The facility has not been in operation for a period of ninety (90) or
18 more consecutive days; or

19 2. a. The current occupant of the facility has advertised a notice of
20 closure; and

21 b. The eligible company proposing the economic development
22 project is not an affiliate of the current occupant of the facility;
23 or

24 3. a. The facility is sold or transferred pursuant to a foreclosure
25 ordered by a court of competent jurisdiction or an order of a
26 bankruptcy court of competent jurisdiction; and

- 1 b. The title to the facility prior to the sale is not vested in the
2 eligible company or an affiliate of the eligible company;
- 3 (b) Replaces an existing manufacturing, agribusiness, nonretail service or
4 technology, or national or regional corporate headquarters facility if:
- 5 1. a. Title to the facility:
- 6 i. Is held by exercise of the power of eminent domain; or
7 ii. May be taken pursuant to a nonappealable judgment
8 granting authority to exercise the power of eminent
9 domain; and
- 10 b. Normal operations at the facility cannot be resumed within
11 twelve (12) months; or
- 12 2. The facility has been damaged or destroyed by fire or other casualty to
13 the extent that normal operations cannot be resumed at the facility
14 within twelve (12) months; or
- 15 (c) Replaces an existing facility located in the same county if the existing
16 facility cannot be expanded due to the unavailability of real estate at or
17 adjacent to the facility to be replaced. Any economic development project
18 satisfying the requirements of this paragraph shall be eligible for incentives
19 under this subchapter only to the extent of the expansion. No incentives
20 shall be available for the equivalent of the facility to be replaced or
21 rehabilitated.
- 22 (3) The authority shall not approve an economic development project under this
23 section which results in a lease abandonment or lease termination by the
24 approved company without the consent of the lessor.

25 ➔SECTION 15. A NEW SECTION SUBCHAPTER 32 OF KRS CHAPTER 154
26 IS CREATED TO READ AS FOLLOWS:

1 By October 1 of each year, the department shall certify to the authority, in the form of
2 an annual report, aggregate tax credits claimed on tax returns filed during the fiscal
3 year ending June 30 of that year and aggregate assessments taken during the prior
4 calendar year by approved companies with respect to their economic development
5 projects under this subchapter, and shall certify to the authority, within ninety (90)
6 days from the date an approved company has filed its state income tax return, when an
7 approved company has taken tax credits or assessments equal to the total incentives
8 available to the approved company.

9 ➔SECTION 16. A NEW SECTION SUBCHAPTER 32 OF KRS CHAPTER 154
10 IS CREATED TO READ AS FOLLOWS:

11 (1) For taxable years beginning after December 31, 2009, an approved company may
12 be eligible for a credit of up to one hundred percent (100%) of the Kentucky
13 income tax imposed under KRS 141.020 or 141.040, and the limited liability
14 entity tax imposed under KRS 141.0401, that would otherwise be owed by the
15 approved company to the Commonwealth for the approved company's taxable
16 year, on the income, Kentucky gross profits, or Kentucky gross receipts of the
17 approved company generated by or arising from the economic development
18 project.

19 (2) The credit allowed the approved company shall be applied against both the
20 income tax imposed by KRS 141.020 or 141.040, and the limited liability entity
21 tax imposed by KRS 141.0401, with credit ordering as provided in Section 30 of
22 this Act, for the taxable year for which the tax return of the approved company is
23 filed, subject to the annual maximum set forth in the tax incentive agreement.
24 Any credit not used in the year in which it was first available may be carried
25 forward to subsequent years, provided that no credit may be carried forward
26 beyond the term of the tax incentive agreement.

1 (3) The approved company shall not be required to pay estimated tax payments as
2 prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross
3 receipts, or Kentucky gross profits generated by or arising from the eligible
4 project.

5 (4) The credit provided by this subsection shall be determined as provided in Section
6 31 of this Act.

7 (5) The amount of incentives allowed in any year shall not exceed the lesser of the
8 tax liability of the approved company related to the economic development project
9 for that year or the annual maximum approved costs set forth in the tax incentive
10 agreement. The incentives shall be allowed for each fiscal year of the approved
11 company during the term of the tax incentive agreement for which a tax return is
12 filed by the approved company.

13 ➔SECTION 17. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
14 154 IS CREATED TO READ AS FOLLOWS:

15 (1) Subject to the availability of funds, a preliminarily approved company with an
16 investment of five hundred million dollars (\$500,000,000) or more may be eligible
17 for the advance disbursement of a portion of the incentives provided under this
18 subchapter. The amount of the advance disbursement shall be based on the
19 employment of Kentucky residents during the construction of the economic
20 development project, shall be negotiated with the authority and shall not exceed
21 the limitations established by this section.

22 (2) The authority shall compute the maximum amount of the advance disbursement
23 employment incentive as follows:

24 (a) The base amount shall equal the total investment specified in the tax
25 incentive agreement multiplied by the labor intensity factor as determined in
26 paragraph (c) of this subsection;

1 (b) The base amount shall then be multiplied by the Kentucky resident factor as
2 determined in paragraph (d) of this subsection. The resulting amount shall
3 be the maximum advance disbursement employment incentive that the
4 authority may approve;

5 (c) The labor intensity factor shall be:

6 1. Twenty-five percent (25%), if the estimated labor component for the
7 economic development project is greater than thirty percent (30%) of
8 the total investment;

9 2. Twenty percent (20%), if the estimated labor component for the
10 economic development project is greater than twenty-five percent
11 (25%) but less than or equal to thirty percent (30%) of the total
12 investment; or

13 3. Fifteen percent (15%), if the estimated labor component for the
14 economic development project is equal to or less than twenty-five
15 percent (25%) of the total capital investment; and

16 (d) The Kentucky resident factor shall be four percent (4%) multiplied by a
17 fraction, the numerator of which shall be the estimated total gross wages
18 that will be paid to Kentucky residents who are working on the construction,
19 retrofit, or upgrade of the economic development project, and the
20 denominator of which shall be the estimated total gross wages that will be
21 paid to all workers working on the construction, retrofit, or upgrade of the
22 economic development project.

23 (3) In negotiating an advance disbursement, the authority shall consider the possible
24 increased risk to the Commonwealth associated with the disbursement of funds
25 prior to project completion, should the preliminarily approved company fail to
26 comply with the terms of the loan agreement or tax incentive agreement.

1 (4) The authority and the preliminarily approved company shall enter into a loan
2 agreement as provided in subsection (1)(b)2. of Section 11 of this Act. The loan
3 agreement shall include but not be limited to:

4 (a) A schedule for the disbursement of funds to the preliminarily approved
5 company;

6 (b) Identification of the collateral or other forms of assurance required to
7 mitigate the risk to the Commonwealth;

8 (c) A provision that requires a reduction or adjustment in the incentives the
9 approved company is scheduled to receive after activation of the economic
10 development project until the advanced disbursement has been repaid. The
11 amount by which the incentives are reduced shall be applied as a credit
12 against the amount owed by the approved company for the advanced
13 disbursement;

14 (d) A repayment schedule, which shall require uniform incremental payments
15 to the extent possible, and which shall include the amount of interest due,
16 the time period over which the advance disbursement amount shall be
17 repaid, and the amount due each year; and

18 (e) An alternative method for payment if incentives are not sufficient to cover
19 the amount of any payment due as set forth in the repayment schedule.

20 (5) The department shall monitor the total incentives for which an approved
21 company is eligible. Any portion of the incentives identified in the tax incentive
22 agreement as being devoted to the repayment of an advance disbursement shall
23 be deducted from the balance of approved costs available for recovery by the
24 approved company, and the department shall forward the amount deducted to the
25 Cabinet for Economic Development, Department of Financial Incentives, for
26 deposit in the authority's account. The timing of all reporting and fund transfers
27 shall be established by agreement between the department and the authority.

1 (6) During the period when an approved company's incentives are being applied to
2 repay an advance disbursement, the approved company shall, at the direction of
3 the authority or the department, file all required requests for incentives, submit
4 all required remittances, make all required tax payments, and provide the
5 department and the authority any information that would normally be required
6 for the approved company to receive incentives.

7 ➔SECTION 18. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
8 154 IS CREATED TO READ AS FOLLOWS:

9 (1) An approved company or, with the authority's consent, an affiliate of an
10 approved company may impose wage assessments against employees as provided
11 in this section, if a wage assessment is included in the incentives awarded to the
12 approved company in the tax incentive agreement. The level of wage assessment
13 shall be negotiated as part of the tax incentive agreement.

14 (2) If an economic development project is located in an enhanced incentive county,
15 the approved company or, with the authority's consent, an affiliate of the
16 approved company may require that each employee subject to the tax imposed by
17 KRS 141.020, whose job is determined by the authority to be created as a result of
18 the economic development project, as a condition of employment, agree to an
19 assessment of up to five percent (5%) of taxable wages.

20 (3) (a) If the economic development project is not located in an enhanced incentive
21 county, and is located in a local jurisdiction where:

22 1. No local occupational license fee is imposed; or

23 2. a. A local occupational license fee greater than or equal to one
24 percent (1%) is imposed; and

25 b. The local jurisdiction agrees to forgo one percent (1%) via
26 credits against the local occupational license fee for the affected
27 employees; then

1 (b) An approved company or, with the authority's consent, an affiliate of an
2 approved company may require that each employee subject to tax imposed
3 by KRS 141.020, whose job is determined by the authority to be created as a
4 result of the economic development project, as a condition of employment,
5 agree to pay an assessment of up to four percent (4%) of taxable wages.

6 (4) (a) If:

- 7 1. The economic development project is not located in an enhanced
8 incentive county, and is located in a jurisdiction where the local
9 occupational license fee is less than one percent (1%); and
10 2. The local jurisdiction agrees to forgo the total amount of the local
11 occupational license fee; then

12 (b) An approved company or, with the authority's consent, an affiliate of an
13 approved company may require that each employee subject to tax imposed
14 by KRS 141.020, whose job is determined by the authority to be created as a
15 result of the economic development project, as a condition of employment,
16 agree to pay an assessment of up to three percent (3%) of taxable wages,
17 plus a percentage equal to the amount of the local occupational license fee
18 the local jurisdiction agrees to forgo.

19 (5) (a) If:

- 20 1. The project is not located in an enhanced incentive county and is
21 located in a county where the jurisdiction imposes a local
22 occupational license fee of less than one percent (1%); and
23 2. The local jurisdiction agrees to forgo only a portion of the total
24 amount of the local occupational license fee; then

25 (b) An approved company or, with the authority's consent, an affiliate of an
26 approved company may require that each employee subject to tax imposed
27 by KRS 141.020, whose job is determined by the authority to be created as a

1 result of the economic development project, as a condition of employment,
2 agree to pay an assessment to be determined as follows:

- 3 1. Divide the local occupational license fee that the local jurisdiction has
4 agreed to forgo by the total local occupational license fee imposed;
- 5 2. Multiply the result determined under subparagraph 1. of this
6 paragraph by three percent (3%); and
- 7 3. Add the result from subparagraph 2. of this paragraph to the local
8 occupational license fee that the local jurisdiction has agreed to forgo.

9 (6) (a) If:

- 10 1. The project is not located in an enhanced incentive county, and is
11 located in a county where the jurisdiction imposes a local
12 occupational license fee equal to or greater than one percent (1%);
13 and
- 14 2. The local jurisdiction agrees to forgo the local occupational license
15 fee in an amount of less than one percent (1%); then

16 (b) An approved company or, with the authority's consent, an affiliate of an
17 approved company may require that each employee subject to tax imposed
18 by KRS 141.020, whose job is determined by the authority to be created as a
19 result of the economic development project, as a condition of employment,
20 agree to pay an assessment to be determined as follows:

- 21 1. Divide the local occupational license fee that the local jurisdiction has
22 agreed to forgo by one percent (1%);
- 23 2. Multiply the result determined under subparagraph 1. of this
24 paragraph by three percent (3%); and
- 25 3. Add the result from subparagraph 2. of this paragraph to the local
26 occupational license fee that the local jurisdiction has agreed to forgo.

1 (7) If the project is not located in an enhanced incentive county, and is located in a
2 local jurisdiction where the jurisdiction does not impose a local occupational
3 license fee, the local jurisdiction shall be required to provide some alternative
4 inducement satisfactory to the authority at the local level in order for a
5 preliminarily approved company to receive final approval. However, the authority
6 may waive this requirement if there are reasonable circumstances that prevent
7 the local jurisdiction from providing a reasonable inducement.

8 (8) Each employee paying the assessment shall simultaneously be entitled to a credit
9 against the Kentucky individual income tax required to be withheld under Section
10 52 of this Act equal to the state portion of the assessment and shall be entitled to
11 a credit against the local occupational license tax equal to the local portion of the
12 assessment.

13 (9) If more than one (1) local jurisdiction imposes an occupational license fee, the
14 local jurisdiction portion of the assessment shall be prorated proportionately
15 among the taxes imposed by the local jurisdictions unless one (1) local
16 jurisdiction agrees to forgo the receipt of these taxes in an amount equal to the
17 local jurisdiction portion of the wage assessment, in which case no proration
18 shall be made.

19 (10) If a full-time employee subject to state tax imposed by KRS 141.020 is already
20 employed by the approved company at a site other than the site of the economic
21 development project, that full-time employee's job shall be deemed to have been
22 created when the full-time employee is transferred to the site of the economic
23 development project, if the full-time employee's existing job is filled with a new
24 full-time employee.

25 (11) If an approved company elects to impose the assessment as a condition of
26 employment, it shall be authorized to deduct the assessment from each payment
27 of wages to the employee unless the approved company receives an advance

1 disbursement as set forth in Section 17 of this Act, in which case assessment
2 claims shall be filed with the department, but no assessment shall be withheld by
3 the company until the advance disbursement is repaid in full.

4 (12) Notwithstanding any other provision of the Kentucky Revised Statutes, if an
5 approved company elects not to deduct the assessment from each payment of
6 wages to the employee, but rather requests a reimbursement of state tax imposed
7 by KRS 141.020 or local occupational tax in the aggregate after they have been
8 paid to the state or local jurisdiction, no interest shall be paid by the state or by
9 the local jurisdiction on that reimbursement.

10 (13) No credit, or portion thereof, shall be allowed against any occupational license
11 fee imposed by or dedicated solely to the board of education in a local
12 jurisdiction.

13 (14) An approved company imposing an assessment shall make its payroll, books, and
14 records available to the authority or the department upon request, and shall file
15 with the authority or department documentation pertaining to the assessment as
16 the authority or department may require.

17 (15) Any assessment of the wages of employees of an approved company in connection
18 with their employment at an economic development project shall permanently
19 cease at the expiration of the tax incentive agreement.

20 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
21 READ AS FOLLOWS:

22 (1) As used in this section:

23 (a) "Corporation" means the Bluegrass State Skills Corporation established by
24 KRS 154.12-205;

25 (b) "Educational institution" means a regionally accredited college, university,
26 or technical school;

- 1 (c) "Metropolitan College" means a nonprofit consortium that includes
2 educational institutions located within the Commonwealth and the qualified
3 taxpayer as members. The purpose of Metropolitan College shall be to
4 provide postsecondary educational opportunities to employees of the
5 qualified taxpayer as part of a combined work and postsecondary education
6 program;
- 7 (d) "Other educational expenses" means the same kinds of educational
8 expenses that were permitted under the Metropolitan College Consortium
9 Agreement approved November 5, 2005; and
- 10 (e) "Qualified taxpayer" means any taxpayer who, on the effective date of this
11 Act, is a party to the Metropolitan College Consortium Agreement approved
12 November 5, 2005.
- 13 (2) To be eligible for the tax credit provided by this section, a qualified taxpayer shall
14 be a partner in Metropolitan College.
- 15 (3) A qualified taxpayer shall be allowed a nonrefundable credit against the tax
16 imposed by KRS 141.020 or 141.040, and KRS 141.0401, for each taxable year
17 beginning on or after July 1, 2010, in the amount of fifty percent (50%) of the
18 actual costs incurred by the qualified taxpayer for:
- 19 (a) Tuition paid to an educational institution for a student participating in the
20 Metropolitan College; and
- 21 (b) Other educational expenses paid on behalf of a student participating in the
22 Metropolitan College;
- 23 on behalf of employees of the qualified corporation, for up to two thousand eight
24 hundred (2,800) employees each year.
- 25 (4) To claim the credit each year, the qualified taxpayer shall, on an annual basis,
26 submit to the corporation information listing each employee of the qualified
27 taxpayer for whom tuition or other educational expenses were paid, the amount

1 paid on behalf of each employee, and the amount of credit the qualified company
2 is eligible to claim. The corporation shall review the information provided by the
3 qualified company, and shall notify the department and the qualified company of
4 the amount of credit the qualified company is eligible to claim.

5 (5) The credit allowed by this section for any taxable year shall not exceed the tax
6 liability of the taxpayer for the taxable year. Any credit not used may be carried
7 forward to subsequent years.

8 (6) The qualified company shall provide to the corporation and the department any
9 information and documentation requested for the purpose of monitoring the
10 credit established by this section.

11 (7) The approved company shall maintain records and submit information as
12 required by the corporation and the department. The corporation may share
13 information provided by the approved company with the department for the
14 purpose of monitoring the credit established by this section.

15 (8) The corporation may, through the promulgation of administrative regulations in
16 accordance with KRS Chapter 13A, establish additional standards or
17 requirements for the administration of this section.

18 (9) The credit established by this section shall expire on April 15, 2013, unless
19 extended by the General Assembly.

20 ➔SECTION 20. SUBCHAPTER 31 OF KRS CHAPTER 154 IS ESTABLISHED
21 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

22 As used in this subchapter:

23 (1) "Agreement" means an agreement entered into pursuant to Section 22 of this Act
24 between the authority and an approved company;

25 (2) "Approved company" means an eligible company that has received approval
26 from the authority for a sales and use tax incentive under this subchapter;

1 (3) "Approved recovery amount" means the maximum sales and use tax incentive
2 recoverable by an approved company as established in the agreement;

3 (4) "Authority" means the Kentucky Economic Development Finance Authority;

4 (5) "Department" means the Department of Revenue;

5 (6) "Economic development project" means:

6 (a) 1. The acquisition or construction of a new facility; or

7 2. The expansion or rehabilitation of an existing facility; and

8 (b) The installation and equipping of the facility;

9 by an eligible company at a specific site in the Commonwealth to be used in a
10 service or technology, manufacturing, or tourism attraction activity conducted by
11 the approved company;

12 (7) "Electronic processing" means the use of technology having electronic, digital,
13 magnetic, wireless, optical, electromagnetic, or similar capabilities, now in
14 existence or later developed to perform a service or technology activity;

15 (8) (a) "Eligible company" means any corporation, limited liability company,
16 partnership, limited partnership, sole proprietorship, business trust, or other
17 legal entity that is primarily engaged in manufacturing or service or
18 technology activities, or in operating or developing a tourism attraction;
19 and

20 (b) "Eligible company" does not include any company whose primary activity
21 is retail sales;

22 (9) "Eligible expenses" means the amount expended for:

23 (a) Building and construction materials permanently incorporated as an
24 improvement to real property as part of an economic development project;
25 or

26 (b) Equipment used for research and development or electronic processing at
27 an economic development project;

1 if the Kentucky sales and use tax imposed by KRS Chapter 139 is paid on the
2 purchase of the materials or equipment at the time of purchase;

3 (10) (a) "Equipment" means tangible personal property which is subject to
4 depreciation under Sections 167 and 168 of the Internal Revenue Code,
5 including assets which are expensed under Section 179 of the Internal
6 Revenue Code, and that is used in the operation of a business.

7 (b) "Equipment" does not include any tangible personal property used to
8 maintain, restore, mend, or repair machinery or equipment, consumable
9 operating supplies, office supplies, or maintenance supplies;

10 (11) (a) "Manufacturing" means to make, assemble, process, produce, or perform
11 any activity that changes the form or conditions of raw materials and other
12 property, and shall include any ancillary activity to the manufacturing
13 process, such as storage, warehousing, distribution, and related office
14 facilities.

15 (b) "Manufacturing" does not include any activity involving the performance
16 of work classified by the divisions, including successor divisions, of mining
17 in accordance with the "North American Industry Classification System,"
18 as revised by the United States Office of Management and Budget from time
19 to time, or any successor publication;

20 (12) "Project term" means the time for which an agreement shall be in effect. The
21 project term shall be established in the agreement and shall not exceed seven (7)
22 years;

23 (13) (a) "Research and development" means experimental or laboratory activity
24 that has as its ultimate goal the development of new products, the
25 improvement of existing products, the development of new uses for existing
26 products, or the development or improvement of methods for producing
27 products.

1 (b) "Research and development" does not include testing or inspection of
2 materials or products for quality control purposes, efficiency surveys,
3 management studies, consumer surveys or other market research,
4 advertising or promotional activities, or research in connection with
5 literary, historical, or similar projects; and

6 (14) "Service or technology" means any nonretail activity using technology or
7 providing a service, including but not limited to:

8 (a) Administration and processing activities;

9 (b) Research and development;

10 (c) Telephone or Internet sales or services;

11 (d) Distribution or fulfillment of orders;

12 (e) Data processing; and

13 (f) Similar activities;

14 provided to customer or affiliate entities primarily outside the Commonwealth
15 and designed to serve a multistate, national, or international market.

16 ➔SECTION 21. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER
17 154 IS CREATED TO READ AS FOLLOWS:

18 (1) The maximum amount of sales and use tax incentives that may be committed in
19 each fiscal year by the authority shall be capped at twenty million dollars
20 (\$20,000,000) for building and construction materials, and five million dollars
21 (\$5,000,000) for equipment used for research and development or electronic
22 processing.

23 (2) (a) To qualify for the sales and use tax incentives available under this
24 subchapter, an eligible company shall make a minimum investment of at
25 least five hundred thousand dollars (\$500,000) in an economic development
26 project, including the cost of land, but excluding the cost of labor.

1 (b) To qualify for the sales and use tax incentive available under this
2 subchapter for electronic processing equipment, in addition to the
3 requirements of paragraph (a) of this subsection, the eligible company shall
4 spend an aggregate amount of at least fifty thousand dollars (\$50,000) on
5 electronic processing equipment installed as part of the economic
6 development project.

7 (3) (a) The maximum sales and use tax incentive available to an approved
8 company under this subchapter is the total amount of sales and use tax paid
9 on purchases made on the following items, up to the approved recovery
10 amount after approval by the authority:

- 11 1. Building and construction materials;
- 12 2. Research and development equipment; and
- 13 3. Electronic processing equipment.

14 (b) An approved company may qualify for a sales and use tax incentive in more
15 than one (1) category listed in paragraph (a) of this subsection for the same
16 economic development project. If the authority approves an eligible
17 company to receive the sales and use tax incentives in more than one (1)
18 category, the authority shall allocate the incentives to the appropriate cap
19 established by subsection (2) of this section.

20 ➔SECTION 22. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER
21 154 IS CREATED TO READ AS FOLLOWS:

22 (1) The application, approval, and monitoring process under this subchapter shall be
23 as follows:

24 (a) An eligible company with a proposed economic development project may
25 submit an application to the authority. The application shall include the
26 information required by subsection (3) of this section;

1 (b) Upon review of the application and any additional information submitted,
2 the authority may, by resolution, approve an economic development project
3 and authorize the negotiation and execution of an agreement pursuant to
4 subsection (4) of this section. Approval granted pursuant to this subsection
5 shall apply to a specific economic development project at a specific location
6 within the Commonwealth;

7 (c) Upon approval, the authority shall notify the department that an approved
8 company is eligible for a sales and use tax incentive under this subchapter
9 and shall provide the department with the information necessary to monitor
10 the use of incentives by the approved company. The authority shall notify
11 the department if the agreement is extended or amended, or if the incentives
12 are transferred, and shall provide the department with the information
13 necessary to update its records; and

14 (d) The approved company shall be eligible to receive the sales and use tax
15 incentives authorized by the agreement upon the earlier of the completion
16 of the economic development project or expiration of the project term. The
17 approved company shall apply to the department for the sales and use tax
18 incentives as provided in Section 23 of this Act, and shall, during the project
19 term, submit all information required by the department as provided in
20 Section 23 of this Act.

21 (2) The authority may establish standards for the review of applications and the
22 approval of eligible companies through the promulgation of administrative
23 regulations in accordance with KRS Chapter 13A. In reviewing applications and
24 establishing standards, the authority shall consider the creditworthiness of the
25 eligible company, employment opportunities for Kentucky residents, wages to be
26 paid, whether the eligible company is participating in other incentive programs
27 pursuant to KRS Chapter 154 for the project, the likelihood that the project will

1 be an economic success, and any other factors the authority determines to be
2 relevant.

3 (3) The application submitted by an eligible company shall include but not be limited
4 to the following:

5 (a) A description of the proposed economic development project;

6 (b) The anticipated minimum investment in the proposed economic
7 development project;

8 (c) An estimate of the approved recovery amount that the company will seek;

9 (d) A timeline for completion of the proposed economic development project;

10 (e) Supporting documentation, as requested by the authority;

11 (f) Payment of any applicable application fee required by the authority; and

12 (g) Any other information requested by the authority.

13 (4) (a) Upon approval of an eligible company, the authority may enter into an
14 agreement with the approved company. The terms of the agreement shall be
15 determined by negotiations between the authority and the approved
16 company, and shall include but not be limited to the following provisions:

17 1. The project term;

18 2. A description of the economic development project;

19 3. The total approved recovery amount in each category for which the
20 approved company is eligible;

21 4. That the approved company shall maintain all records and
22 documentation relating to eligible expenditures and the Kentucky
23 sales and use tax paid, and shall provide those records and
24 documentation to the authority or the department upon request;

25 5. That the approved company shall execute information-sharing
26 agreements prescribed by the department with contractors, vendors,
27 and other related parties to verify the costs of and payment of sales

1 and use tax on the tangible personal property eligible for the sales and
2 use tax incentive under this subchapter;

3 6. That the sales and use tax incentives shall not be assignable or
4 transferable without written notice to the authority and approval of the
5 authority; and

6 7. Any other provisions not inconsistent with this subchapter.

7 (b) The project term established in the agreement may be extended by approval
8 of the authority for good cause shown; however, the term shall not be
9 extended beyond seven (7) years from the date of approval.

10 (c) An approved company may transfer or assign its designation as an
11 approved company upon prior notification to the authority and approval of
12 the authority in a manner prescribed by the authority.

13 (5) The contents of a company's filings under this subchapter shall be subject to the
14 Kentucky Open Records Act, KRS 61.870 to 61.884.

15 (6) The authority shall annually submit a complete and detailed report of the use of
16 the sales and use tax incentives and participation of approved companies under
17 this subchapter within one hundred twenty (120) days after the end of each fiscal
18 year to the Legislative Research Commission and to the Governor.

19 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) As used in this section:

22 (a) "Agreement" has the same meaning as in Section 20 of this Act;

23 (b) "Approved company" has the same meaning as in Section 20 of this Act;

24 (c) "Economic development project" has the same meaning as in Section 20 of
25 this Act;

26 (d) "Electronic processing" has the same meaning as in Section 20 of this Act;

27 (e) "Equipment" has the same meaning as in Section 20 of this Act;

1 (f) "Project term" has the same meaning as in Section 20 of this Act; and

2 (g) "Research and development" has the same meaning as in Section 20 of this
3 Act.

4 (2) Notwithstanding any provision of KRS 139.770 to the contrary, an approved
5 company may receive a refund of sales and use tax paid on approved expenses
6 after execution of the agreement for building and construction materials, and
7 equipment used in research and development or for electronic processing at an
8 economic development project as provided in the agreement executed under
9 Section 22 of this Act.

10 (3) (a) The approved company shall apply for the sales and use tax incentives as
11 provided in this subsection.

12 (b) For an economic development project with a project term of three (3) years
13 or less, the approved company shall submit an application to receive the
14 sales and use tax incentives to the department within sixty (60) days of the
15 earlier of the completion of the economic development project or the
16 expiration of the project term.

17 (c) 1. For an economic development project with a project term of greater
18 than three (3) years, the approved company shall, beginning with the
19 third year of the project term, file with the department annually an
20 information return, and any supporting documentation required by
21 the department. The approved company shall not be eligible to receive
22 the sales and use tax incentives until the project is complete and the
23 application for incentives is submitted to the department as required
24 by subparagraph 3. of this paragraph.

25 2. The information return and documentation shall be filed with the
26 department within sixty (60) days following the end of the calendar
27 year, and shall include information relating to prior unreported years.

- 1 3. The approved company shall file a final request for sales and use tax
2 incentives within sixty (60) days of the earlier of the completion of the
3 economic development project or the expiration of the project term.
- 4 (4) The approved company shall have no obligation to refund or otherwise return
5 any amount of the sales and use tax refund received to the person who originally
6 collected the tax and remitted it to the Commonwealth.
- 7 (5) An approved company shall execute information-sharing agreements prescribed
8 by the department with contractors, vendors, and other related parties so that the
9 department may verify expenditures and sales and use tax paid.
- 10 (6) Interest shall not be allowed or paid on any incentives paid under this section.
11 The department may examine any distribution of sales and use tax incentives
12 within four (4) years from the date the final application for sales and use tax
13 incentives is received. An overpayment resulting from the examination shall be
14 repaid to the State Treasury. Any amount required to be repaid is subject to the
15 interest provisions of KRS 131.183 and to the penalty provisions of KRS 131.180.
- 16 (7) The department may promulgate administrative regulations, in accordance with
17 KRS Chapter 13A, and shall require the filing of forms designed by the
18 department to reflect the intent of this subchapter.

19 ➔SECTION 24. A NEW SECTION OF KRS 154.20-200 TO 154.20-216 IS
20 CREATED TO READ AS FOLLOWS:

21 New applications shall not be accepted or considered under KRS 154.20-200 to 154.20-
22 216 on or after the effective date of this Act. All outstanding approved projects as of the
23 effective date of this Act shall continue to be governed by the provisions of KRS 154.20-
24 200 to 154.20-216.

25 ➔SECTION 25. A NEW SECTION OF SUBCHAPTER 22 OF KRS CHAPTER
26 154 IS CREATED TO READ AS FOLLOWS:

1 New applications shall not be accepted or considered under this subchapter on or after
2 the effective date of this Act. All outstanding projects with preliminary or final
3 approval under this subchapter as of the effective date of this Act shall continue to be
4 governed by the provisions of this subchapter.

5 ➔SECTION 26. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER
6 154 IS CREATED TO READ AS FOLLOWS:

7 New applications shall not be accepted or considered under this subchapter on or after
8 the effective date of this Act. All outstanding projects with preliminary or final
9 approval under this subchapter as of the effective date of this Act shall continue to be
10 governed by the provisions of this subchapter.

11 ➔SECTION 27. A NEW SECTION OF SUBCHAPTER 24 OF KRS CHAPTER
12 154 IS CREATED TO READ AS FOLLOWS:

13 New applications shall not be accepted or considered under this subchapter on or after
14 the effective date of this Act. All outstanding projects with preliminary or final
15 approval under this subchapter as of the effective date of this Act shall continue to be
16 governed by the provisions of this subchapter.

17 ➔SECTION 28. A NEW SECTION OF SUBCHAPTER 28 OF KRS CHAPTER
18 154 IS CREATED TO READ AS FOLLOWS:

19 New applications shall not be accepted or considered under this subchapter on or after
20 the effective date of this Act. All outstanding projects with preliminary or final
21 approval under this subchapter as of the effective date of this Act shall continue to be
22 governed by the provisions of this subchapter.

23 ➔Section 29. KRS 154.20-033 is amended to read as follows:

24 (1) The authority shall have all the powers necessary or convenient to carry out and
25 effectuate the purposes and provisions of Subchapters 20 to 28 and 30 to 34 of this
26 chapter, including but not limited to:

1 ~~(a)~~~~(1)~~ Employing fiscal consultants, attorneys, appraisers, and other agents on
2 behalf of the authority whom the authority deems necessary or convenient for
3 the preparation and administration of agreements and documents necessary or
4 incident to any project. The fees for the services provided by persons
5 employed on behalf of the authority shall be paid by the beneficiary of a loan,
6 grant, assessment, incentive, inducement, or tax credit under this chapter
7 directly to the person providing consultation, advisory, legal or other services;
8 and

9 ~~(b)~~~~(2)~~ Imposing and collecting fees and charges in connection with any
10 transaction and providing for reasonable penalties for delinquent payment of
11 fees and charges.

12 **(2) A director or officer of the authority shall not be subject to any personal liability**
13 **or accountability by reason of the execution of any obligation duly authorized by**
14 **the authority.**

15 **(3) The authority may accept and expend moneys which may be appropriated from**
16 **time to time by the General Assembly, or moneys which may be received from any**
17 **source, including income from the authority's operations for effectuating its**
18 **purpose, including without limitation the payment of the expenses of**
19 **administration and operation.**

20 ➔Section 30. KRS 141.0205 is amended to read as follows:

21 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
22 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of
23 the credits shall be determined as follows:

24 (1) The nonrefundable business incentive credits against the tax imposed by KRS
25 141.020 shall be taken in the following order:

- 1 (a) 1. For taxable years beginning after December 31, 2004, and before
2 January 1, 2007, the corporation income tax credit permitted by KRS
3 141.420(3)(a);
- 4 2. For taxable years beginning after December 31, 2006, the limited
5 liability entity tax credit permitted by KRS 141.0401;
- 6 (b) The economic development credits computed under KRS 141.347, 141.400,
7 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, **Sections 19 and**
8 **69 of this Act**, and 154.27-080;
- 9 (c) The certified rehabilitation credit permitted by KRS 171.397**(1)(a)**;
- 10 (d) The health insurance credit permitted by KRS 141.062;
- 11 (e) The tax paid to other states credit permitted by KRS 141.070;
- 12 (f) The credit for hiring the unemployed permitted by KRS 141.065;
- 13 (g) The recycling or composting equipment credit permitted by KRS 141.390;
- 14 (h) The tax credit for cash contributions in investment funds permitted by KRS
15 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
16 154.20-258;
- 17 (i) The coal incentive credit permitted under KRS 141.0405;
- 18 (j) The research facilities credit permitted under KRS 141.395;
- 19 (k) The employer GED incentive credit permitted under KRS 151B.127;
- 20 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 21 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 22 (n) The environmental stewardship credit permitted by KRS 154.48-025;
- 23 (o) The clean coal incentive credit permitted by KRS 141.428;
- 24 (p) The ethanol credit permitted by KRS 141.4242;
- 25 (q) The cellulosic ethanol credit permitted by KRS 141.4244;
- 26 (r) The energy efficiency credits permitted by KRS 141.436; and

- 1 (s) The ENERGY STAR home or ENERGY STAR manufactured home credit
2 permitted by KRS 141.437.
- 3 (2) After the application of the nonrefundable credits in subsection (1) of this section,
4 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
5 shall be taken in the following order:
- 6 (a) The individual credits permitted by KRS 141.020(3);
7 (b) The credit permitted by KRS 141.066;
8 (c) The tuition credit permitted by KRS 141.069; and
9 (d) The household and dependent care credit permitted by KRS 141.067.
- 10 (3) After the application of the nonrefundable credits provided for in subsection (2) of
11 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
12 taken in the following order:
- 13 (a) The individual withholding tax credit permitted by KRS 141.350;
14 (b) The individual estimated tax payment credit permitted by KRS 141.305; and
15 (c) For taxable years beginning after December 31, 2004, and before January 1,
16 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
17 **(d) The certified rehabilitation credit permitted by subsection (1)(b) of Section**
18 **32 of this Act; and**
19 **(e) The film industry tax credit allowed by Section 47 of this Act.**
- 20 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
21 tax imposed by KRS 141.040.
- 22 (5) The following nonrefundable credits shall be applied against the sum of the tax
23 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
24 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 25 (a) The economic development credits computed under KRS 141.347, 141.400,
26 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, **Sections 19 and**
27 **69 of this Act,** and KRS 154.27-080;

- 1 (b) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 2 (c) The health insurance credit permitted by KRS 141.062;
- 3 (d) The unemployment credit permitted by KRS 141.065;
- 4 (e) The recycling or composting equipment credit permitted by KRS 141.390;
- 5 (f) The coal conversion credit permitted by KRS 141.041;
- 6 (g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
- 7 ending prior to January 1, 2008;
- 8 (h) The tax credit for cash contributions to investment funds permitted by KRS
- 9 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 10 154.20-258;
- 11 (i) The coal incentive credit permitted under KRS 141.0405;
- 12 (j) The research facilities credit permitted under KRS 141.395;
- 13 (k) The employer GED incentive credit permitted under KRS 151B.127;
- 14 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 15 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 16 (n) The environmental stewardship credit permitted by KRS 154.48-025;
- 17 (o) The clean coal incentive credit permitted by KRS 141.428;
- 18 (p) The ethanol credit permitted by KRS 141.4242;
- 19 (q) The cellulosic ethanol credit permitted by KRS 141.4244;
- 20 (r) The energy efficiency credits permitted by KRS 141.436; and
- 21 (s) The ENERGY STAR home or ENERGY STAR manufactured home credit
- 22 permitted by KRS 141.437.
- 23 (6) After the application of the nonrefundable credits in subsection (5) of this section,
- 24 the refundable **credits shall be taken in the following order:**
- 25 **(a) The** corporation estimated tax payment credit permitted by KRS 141.044;
- 26 **(b) The certified rehabilitation credit permitted by subsection (1)(b) of Section**
- 27 **32 of this Act; and**

1 ~~(c) The film industry tax credit allowed in Section 47 of this Act~~ shall be
2 ~~allowed as a credit against the total of any remaining taxes imposed by KRS 141.040 and~~
3 ~~the tax imposed by KRS 141.0401].~~

4 ➔ Section 31. KRS 141.415 is amended to read as follows:

5 (1) As used in this section, unless the context requires otherwise:

6 (a) "Approved company" ~~means~~~~[has]~~ the same~~[meaning]~~ as ~~defined~~~~[set forth]~~ in
7 KRS 154.34-010 or Section 9 of this Act;

8 (b) "Economic development project" means the same as defined in Section 9 of
9 this Act;

10 (c) "Reinvestment project" ~~means~~~~[has]~~ the same~~[meaning]~~ as ~~defined~~~~[set forth]~~
11 in KRS 154.34-010;

12 ~~(d)~~~~(c)~~ "Tax credit" means the tax credit allowed in Section 5 of this Act or the
13 credit allowed in Section 16 of this Act, as the case may be~~[KRS 154.34-~~
14 ~~080]~~;

15 ~~(e)~~~~(d)~~ "Kentucky gross receipts" means the same~~[Kentucky gross receipts]~~ as
16 defined in KRS 141.0401; and

17 ~~(f)~~~~(e)~~ "Kentucky gross profits" means the same~~[Kentucky gross profits]~~ as
18 defined in KRS 141.0401.

19 (2) An approved company shall determine the income tax credit as provided in this
20 section.

21 (3) An approved company which is an individual sole proprietorship subject to tax
22 under KRS 141.020 or a corporation or pass-through entity treated as a corporation
23 for federal income tax purposes subject to tax under KRS 141.040(1) shall:

24 (a) 1. Compute the tax due at the applicable tax rates as provided by KRS
25 141.020 or 141.040 on net income as defined by KRS 141.010(11) or
26 taxable net income as defined by KRS 141.010(14), including income
27 from a reinvestment project or economic development project;

- 1 2. Compute the limited liability entity tax imposed under KRS 141.0401
2 including Kentucky gross profits or Kentucky gross receipts from the
3 reinvestment project **or economic development project**; and
- 4 3. Add the amounts computed under subparagraphs 1. and 2. of this
5 paragraph and, if applicable, subtract the credit permitted by KRS
6 141.0401(3) from that sum. The resulting amount shall be the net tax for
7 purposes of this paragraph.
- 8 (b) 1. Compute the tax due at the applicable tax rates as provided by KRS
9 141.020 or 141.040 on net income as defined by KRS 141.010(11) or
10 taxable net income as defined by KRS 141.010(14), excluding net
11 income attributable to a reinvestment project **or economic development**
12 **project**;
- 13 2. Using the same method used under paragraph (a)2. of this subsection,
14 compute the limited liability entity tax imposed under KRS 141.0401,
15 including Kentucky gross profits or Kentucky gross receipts from the
16 reinvestment project **or economic development project**; and
- 17 3. Add the amounts computed under subparagraphs 1. and 2. of this
18 paragraph and, if applicable, subtract the credit permitted by KRS
19 141.0401(3) from that sum. The resulting amount shall be the net tax for
20 purposes of this paragraph.
- 21 (c) The tax credit shall be the amount by which the tax computed under paragraph
22 (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this
23 subsection; however, the credit shall not exceed the limits set forth in **Section**
24 **5 of this Act or Section 16 of this Act, as the case may be**~~[KRS 154.34-080]~~.
- 25 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
26 which is a pass-through entity not subject to the tax imposed by KRS 141.040
27 or trust not subject to the tax imposed by KRS 141.040 shall be subject to

- 1 income tax on the net income attributable to a reinvestment project or
2 economic development project at the rates provided in KRS 141.020(2).
- 3 (b) The amount of the tax credit shall be determined as provided in subsection (3)
4 of this section. Upon the annual election of the approved company, in lieu of
5 the tax credit, an amount shall be applied as an estimated tax payment equal to
6 the tax computed in this section. Any estimated tax payment made pursuant to
7 this paragraph shall be in satisfaction of the tax liability of the partners,
8 members, shareholders, or beneficiaries of the pass-through entity or trust, and
9 shall be paid on behalf of the partners, members, shareholders, or
10 beneficiaries.
- 11 (c) The tax credit or estimated payment shall not exceed the limits set forth in
12 Section 5 of this Act or Section 16 of this Act, as the case may be ~~KRS~~
13 ~~154.34-080~~].
- 14 (d) If the tax computed in this section exceeds the tax credit, the difference shall
15 be paid by the pass-through entity or trust at the times provided by KRS
16 141.160 for filing the returns.
- 17 (e) Any estimated tax payment made by the pass-through entity or trust in
18 satisfaction of the tax liability of partners, members, shareholders, or
19 beneficiaries shall not be treated as taxable income subject to Kentucky
20 income tax by the partner, member, shareholder, or beneficiary.
- 21 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
22 the tax credit, and the estimated tax payment determined under subsection (4) of
23 this section shall be excluded in determining each partner's, member's,
24 shareholder's, or beneficiary's distributive share of net income or credit of a pass-
25 through entity or trust.
- 26 (6) If the reinvestment project or economic development project is a totally separate
27 facility:

- 1 (a) Net income attributable to the project for the purposes of subsections (3), (4),
2 and (5) of this section shall be determined under the separate accounting
3 method reflecting only the gross income, deductions, expenses, gains, and
4 losses allowed under KRS Chapter 141 directly attributable to the facility and
5 overhead expenses apportioned to the facility; and
- 6 (b) Kentucky gross receipts or Kentucky gross profits attributable to the project
7 for the purposes of subsection (3) of this section shall be determined under the
8 separate accounting method reflecting only the Kentucky gross receipts or
9 Kentucky gross profits directly attributable to the facility.
- 10 (7) If the reinvestment project or economic development project is an expansion to a
11 previously existing facility:
- 12 (a) Net income attributable to the entire facility shall be determined under the
13 separate accounting method reflecting only the gross income, deductions,
14 expenses, gains, and losses allowed under KRS Chapter 141 directly
15 attributable to the facility and overhead expenses apportioned to the facility,
16 and the net income attributable to the reinvestment project or economic
17 development project for the purposes of subsections (3), (4), and (5) of this
18 section shall be determined by apportioning the separate accounting net
19 income of the entire facility to the reinvestment project or economic
20 development project by a formula approved by the department ~~of Revenue~~;
21 and
- 22 (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire
23 facility shall be determined under the separate accounting method reflecting
24 only the Kentucky gross receipts or Kentucky gross profits directly
25 attributable to the facility, and Kentucky gross receipts or Kentucky gross
26 profits attributable to the reinvestment project or economic development
27 project for the purposes of subsection (3) of this section shall be determined

1 by apportioning the separate accounting Kentucky gross receipts or Kentucky
2 gross profits of the entire facility to the reinvestment project or economic
3 development project by a formula approved by the department~~[of Revenue]~~.

4 (8) If an approved company can show to the satisfaction of the department~~[of~~
5 ~~Revenue]~~ that the nature of the operations and activities of the approved company
6 are such that it is not practical to use the separate accounting method to determine
7 the net income, Kentucky gross receipts, or Kentucky gross profits from the facility
8 at which the reinvestment project or economic development project is located, the
9 approved company shall determine net income, Kentucky gross receipts, or
10 Kentucky gross profits from the reinvestment project or economic development
11 project using an alternative method approved by the department~~[of Revenue]~~.

12 (9) The department~~[of Revenue]~~ may promulgate~~[issue]~~ administrative regulations
13 and require the filing of forms designed by the department~~[of Revenue]~~ to reflect
14 the intent of KRS 154.34-010 to 154.34-100 and Subchapter 32 of KRS Chapter
15 154, and the allowable income tax credit which an approved company may retain
16 under KRS 154.34-010 to 154.34-100 or Subchapter 32 of KRS Chapter 154.

17 ➔SECTION 32. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) As used in this section:

20 (a) "Certified historic structure" means the same as defined in Section 33 of
21 this Act;

22 (b) "Qualified rehabilitation expense" means the same as defined in Section 33
23 of this Act; and

24 (c) "Substantial rehabilitation" means the same as defined in Section 33 of
25 this Act.

26 (2) A refundable or transferable credit in the amount determined in Section 34 of
27 this Act shall be allowed against the taxes imposed by KRS 136.505 or 141.020 or

1 **141.040 and 141.0401, with the ordering of credits provided in Section 30 of this**
2 **Act, for qualified rehabilitation expenses incurred by the taxpayer and used for**
3 **substantial rehabilitation to a certified historic structure.**

4 ➔ Section 33. KRS 171.396 is amended to read as follows:

5 As used in this section and KRS 171.397:

6 (1) "Certified historic structure" means a structure that is located within the
7 Commonwealth of Kentucky ~~that and~~ is:

8 (a) Listed individually on the National Register of Historic Places; or

9 (b) Located in a historic district listed on the National Register of Historic Places
10 and is certified by the council as contributing to the historic significance of the
11 district;

12 (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified
13 historic structure that the council certifies meets the United States Secretary of the
14 Interior's Standards for Rehabilitation;

15 (3) "Certified rehabilitation credit cap" means **an annual amount of:**

16 **(a) Three million dollars (\$3,000,000) for applications received prior to April 30,**
17 **2010; and**

18 **(b) Five million dollars (\$5,000,000) for applications received on or after April**
19 **30, 2010;**

20 **plus any amount added to the certified rehabilitation credit cap pursuant to**
21 **subsection (2)(c) of Section 34 of this Act;**

22 (4) "Council" means the Kentucky Heritage Council;

23 (5) "Disqualifying work" means work that is performed within three (3) years of the
24 completion of the certified rehabilitation that, if performed as part of the
25 rehabilitation certified under **Section 34 of this Act** ~~[this section]~~, would have made
26 the rehabilitation ineligible for certification;

- 1 (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of
2 the Internal Revenue Code, any political subdivision of the Commonwealth, any
3 state or local agency, board, or commission, or any quasi-governmental entity;
- 4 (7) "Local government" means a city, county, urban-county, charter county, or
5 consolidated local government;
- 6 (8) "Owner-occupied residential property" means a building or portion thereof,
7 condominium, or cooperative occupied by the owner as his or her principal
8 residence;
- 9 (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to
10 a capital account, whether or not depreciation is allowed under Section 168 of the
11 Internal Revenue Code, and is expended in connection with the certified~~ly~~
12 ~~substantial~~ rehabilitation of a certified historic structure. It shall include the cost of
13 restoring landscaping and fencing that contributes to the historic significance of this
14 structure, but shall not include the cost of acquisition of a certified historic
15 structure, enlargement of or additions to an existing building, or the purchase of
16 personal property;
- 17 (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for
18 which the qualified rehabilitation expenses, during a twenty-four (24) month period
19 selected by the taxpayer or exempt entity, ending with or within the taxable year,
20 exceed:
- 21 (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential
22 property; or
- 23 (b) For all other property, the greater of:
- 24 1. The adjusted basis of the structure; or
- 25 2. Twenty thousand dollars (\$20,000);
- 26 (11) "Taxpayer" means any individual, corporation, limited liability company, business
27 development corporation, partnership, limited partnership, sole proprietorship,

1 association, joint stock company, receivership, trust, professional service
2 organization, or other legal entity through which business is conducted that:

3 (a) Elects to claim the credit on a return and receive a refund as provided in
4 subsection (2)(b)2.a. of Section 34 of this Act; or

5 (b) Is the recipient of a credit which is transferred as provided in subsection
6 (2)(b)2.b. of Section 34 of this Act; and

7 (12) "Qualified purchased historic home" means any substantially rehabilitated certified
8 historic structure if:

9 (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first
10 purchaser of the structure after the date of completion of the substantial
11 rehabilitation;

12 (b) The structure or a portion thereof will be the principal residence of the
13 taxpayer; and

14 (c) No credit was allowed to the seller under this section.

15 A qualified purchased historic home shall be deemed owner-occupied residential
16 property for purposes of this section.

17 ➔Section 34. KRS 171.397 is amended to read as follows:

18 (1) (a) For all applications for a preliminary approval received prior to April 30,

19 2010, there shall be allowed as a credit against the taxes imposed by KRS
20 141.020, 141.040, 141.0401, or 136.505, an amount equal to:

21 1.[(a)] Thirty percent (30%) of the qualified rehabilitation expenses, in
22 the case of owner-occupied residential property; and

23 2.[(b)] Twenty percent (20%) of the qualified rehabilitation expenses, in
24 the case of all other property.

25 In the case of an exempt entity that has incurred qualified rehabilitation
26 expenses, the credit provided in this subsection shall be available to transfer or
27 assign as provided under subsection (8) or (9) of this section.

1 (b) For applications for preliminary approval received on or after April 30,
2 2010, the credit shall be refundable if the taxpayer makes an election under
3 subsection (2)(b) of this section.

4 (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section
5 shall file an application for a preliminary determination of maximum credit
6 eligibility before April 30 of the year in which the proposed project will begin.
7 The application shall describe the project and shall include documentation
8 supporting the qualification of the project for the credit, the proposed start
9 date, the proposed completion date, the projected qualified rehabilitation
10 expenses, and any other information the council may require. The council
11 shall determine the preliminary maximum credit available for each taxpayer
12 and shall notify the taxpayer of that amount by June 30~~[May 31]~~ of the year in
13 which the application was filed. If total credits applied for in any year exceed
14 the certified rehabilitation credit cap, plus any amounts added to the cap
15 pursuant to paragraph (c) of this subsection, the provisions of subsection (5)
16 of this section shall be applied to reduce the approved credits for all taxpayers
17 with qualifying applications for that year.

18 (b) 1. An application for a final determination of credit shall be submitted to
19 the council upon completion of the project~~[within thirty (30) days~~
20 ~~following the close of the calendar year in which the project is~~
21 ~~completed].~~

22 2. The application shall include an irrevocable election by the taxpayer
23 to:

24 a. Use the credit, in which case, the credit shall be refundable; or

25 b. Transfer the credit.

26 3. The council shall determine the final amount of credit approved for each
27 taxpayer based upon the actual expenditures, preliminary determination

1 of maximum credit, and a determination that the expenditures are
2 qualified rehabilitation expenses.

3 **4.** The council shall notify the taxpayer and Department of Revenue of the
4 final approved credit amount **within sixty (60) days of the receipt of a**
5 **completed application from the taxpayer**~~[by the thirty first day of the~~
6 ~~third month following the close of the calendar year].~~

7 (c) 1. If the total amount of credits finally approved for a taxpayer under
8 paragraph (b) of this subsection are less than the credits initially
9 approved for a taxpayer under paragraph (a) of this subsection, the
10 difference between the two (2) amounts shall be added to the certified
11 rehabilitation credit cap for the next calendar year.

12 2. If the total amount of credits approved under paragraph (a) of this
13 subsection in any calendar year is less than **the certified rehabilitation**
14 **credit cap**~~[three million dollars (\$3,000,000)]~~, the difference between
15 the credits actually awarded and the **certified rehabilitation credit** cap~~[~~
16 ~~amount of three million dollars (\$3,000,000)]~~ shall be added to the
17 certified rehabilitation credit cap for the next calendar year.

18 (3) (a) The maximum credit which may be claimed with regard to owner-occupied
19 residential property shall be sixty thousand dollars (\$60,000) subject to
20 subsection (5) of this section. The credit in this section shall be claimed for
21 the taxable year in which the certified rehabilitation is completed.

22 (b) The maximum credit which may be claimed with regard to all other property
23 that is not owner-occupied residential shall be four hundred thousand dollars
24 (\$400,000) subject to subsection (5) of this section. The credit in this section
25 shall be claimed for the taxable year in which the certified rehabilitation is
26 completed.

- 1 (4) In the case of a husband and wife filing separate returns or filing separately on a
2 joint return, the credit may be taken by either or divided equally, but the combined
3 credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation
4 in subsection (3)(a) of this section, or four hundred thousand dollars (\$400,000) if
5 subject to the limitation in subsection (3)(b) of this section, subject to the provisions
6 of subsection (5) of this section.
- 7 (5) The credit amount approved for a calendar year for all taxpayers under subsection
8 (2)(a) of this section shall be limited to the certified rehabilitation credit cap~~[plus~~
9 ~~any amounts added to the cap pursuant to subsection (2)(c) of this section]~~. When
10 the total credits applied for and approved in any year under subsection (2)(a) of this
11 section exceed the certified rehabilitation credit cap~~[plus any amounts added to the~~
12 ~~cap pursuant to subsection (2)(c) of this section]~~, the council shall apportion the
13 certified rehabilitation credit cap as follows: **The certified rehabilitation credit cap**
14 **for the year under consideration shall be**~~[Three million dollars (\$3,000,000) plus~~
15 ~~any amounts added to the cap pursuant to subsection (2)(c) of this section,]~~
16 multiplied by a fraction, the numerator which is the approved credit amount for an
17 individual taxpayer for a calendar year and the denominator which is the total
18 approved credits for all taxpayers for a calendar year.
- 19 (6) **(a) For all applications received prior to April 30, 2010,** if the credit amount that
20 may be claimed in any tax year as determined under subsections (3) to (5) of
21 this section exceeds the taxpayer's total tax liabilities under KRS 136.505, **or**
22 141.020, 141.040, **and**~~[or]~~ 141.0401, the taxpayer may carry the excess tax
23 credit forward until the tax credit is used, provided that any tax credits not
24 used within seven (7) years of the taxable year the certified rehabilitation was
25 complete shall be lost.
- 26 **(b) For all applications received on or after April 30, 2010, if the credit amount**
27 **that may be claimed in any tax year as determined under subsections (3) to**

1 *(5) of this section exceeds the taxpayer's total tax liabilities under KRS*
2 *136.505 or 141.020 or 141.040 and 141.0401, the taxpayer may receive a*
3 *refund, if the taxpayer elected to take the credit as required by subsection*
4 *(2)(b) of this section.*

5 (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or
6 141.040 and the limited liability entity tax imposed by KRS 141.0401, with
7 the ordering of credits as provided in KRS 141.0205.

8 (b) *1. For applications received prior to April 30, 2010,* if the taxpayer is a
9 pass-through entity not subject to the tax imposed by KRS 141.040, the
10 taxpayer shall apply the credit at the entity level against the limited
11 liability tax entity imposed by KRS 141.0401, and shall also pass the
12 credit through in the same proportion as the distributive share of income
13 or loss is passed through.

14 *2. For applications received on or after April 30, 2010, if the taxpayer is*
15 *a pass-through entity not subject to the tax imposed by KRS 141.040,*
16 *the taxpayer shall apply the credit at the entity level against the limited*
17 *liability tax entity imposed by KRS 141.0401, and may receive a refund*
18 *if the taxpayer elected to take the credit as required by subsection*
19 *(2)(b)2.a. of this section.*

20 (8) Credits received under this section may be transferred or assigned *if an election is*
21 *made under subsection (2)(b) of this section,* for some or no consideration, along
22 with any related benefits, rights, responsibilities, and liabilities to any entity subject
23 to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any
24 transfer of credits, the party transferring the credits shall notify the Department of
25 Revenue of:

26 (a) The name, address, employer identification number, and bank routing and
27 transfer number, of the party to which the credits are transferred;

1 (b) The amount of credits transferred; and

2 (c) Any additional information the Department of Revenue deems necessary.

3 The provisions of this subsection shall apply to any credits that pass through to a
4 successor or beneficiary of a taxpayer.

5 (9) For purposes of this section, a lessee of a certified historic structure shall be treated
6 as the owner of the structure if the remaining term of the lease is not less than the
7 minimum period promulgated by administrative regulation by the council.

8 (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any
9 consideration received for the transfer, sale, assignment, or use of a tax credit
10 approved under this section.

11 (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity
12 that performs disqualifying work, as determined by the Kentucky Heritage Council,
13 on a certified historic structure for which a rehabilitation has been certified under
14 this section in an amount equal to one hundred percent (100%) of the tax credit
15 allowed on the rehabilitation. Any penalties shall be assessed against the property
16 owner who performs the disqualifying work and not against any transferee of the
17 credits.

18 (12) The council may impose fees for processing applications for tax credits, not to
19 exceed the actual cost associated with processing the applications.

20 (13) The council may authorize a local government to perform an initial review of
21 applications for the credit allowed under this section and forward the applications to
22 the council with its recommendations.

23 (14) The council and the Department of Revenue may promulgate administrative
24 regulations in accordance with the provisions of KRS Chapter 13A to establish
25 policies and procedures to implement the provisions of subsections (1) to (13) of
26 this section.

1 (15) The tax credit authorized by this section shall apply to tax periods ending on or after
2 December 31, 2005.

3 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Approved company" means an eligible company that has received
7 preliminary approval from the department for a sales and use tax refund
8 under this section;

9 (b) "Communications system" means a system composed of equipment used to
10 provide communications services as defined in KRS 139.195.
11 "Communications system" does not include repair, replacement, or spare
12 parts as defined in KRS 139.010, installation materials, operating supplies,
13 office supplies, or supplies to maintain the system;

14 (c) "Computer software" means a set of coded instructions designed to cause a
15 computer or automatic processing equipment to perform a task;

16 (d) "Computer system" means a system composed of personal computers,
17 laptops, computer software, computer servers, processors, coprocessors,
18 memory devices, storage devices, input and output devices, and other
19 similar devices deployed as part of the system configuration. "Computer
20 system" does not include repair, replacement, or spare parts as defined in
21 KRS 139.010, installation materials, operating supplies, office supplies, or
22 supplies to maintain the system;

23 (e) "Eligible company" means a corporation, limited liability company,
24 partnership, registered limited liability partnership, sole proprietorship,
25 business trust, or any other entity that is classified under the following 2007
26 North American Industry Classification System (NAICS) industry codes,
27 including any subsequent updates or revisions thereto;

- 1 1. NAICS 511210, Software publishers;
- 2 2. NAICS 518210, Data processing, hosting, and related services;
- 3 3. NAICS 519130, Internet publishing, broadcasting, and web search
- 4 portal business; or
- 5 4. NAICS 541511, Custom computer programming services; and
- 6 (f) "Qualifying system" means:
 - 7 1. A communications system;
 - 8 2. A computer system; or
 - 9 3. A combination thereof;
- 10 that is subject to depreciation under Section 167 or 168 of the Internal
- 11 Revenue Code, including assets expensed under Section 179 of the Internal
- 12 Revenue Code.
- 13 (2) Notwithstanding KRS 134.580(3) and 139.770, an approved company may qualify
- 14 for a refund of up to one hundred percent (100%) of the Kentucky sales and use
- 15 tax paid, reduced by the amount of vendor compensation allowed under KRS
- 16 139.570, on the purchase of a qualifying system.
- 17 (3) To qualify for the refund provided in subsection (2) of this section, all of the
- 18 following requirements shall be met:
 - 19 (a) The eligible company shall file an application for preliminary approval with
 - 20 the department prior to making the purchase;
 - 21 (b) Upon receiving preliminary approval, the approved company shall purchase
 - 22 the qualifying system on or after July 1, 2010, and shall spend one hundred
 - 23 million dollars (\$100,000,000) or more on the purchase or purchases,
 - 24 excluding tax;
 - 25 (c) The qualifying system shall be installed at a single location in the
 - 26 Commonwealth within eighteen (18) months from the date the department

1 preliminarily approves the eligible company for a sales and use tax refund
2 as provided in subsection (5) of this section; and
3 (d) The approved company shall use the qualifying system:
4 1. At the specified location until the property is fully depreciated or, if the
5 approved company elects to expense the property under Section 179 of
6 the Internal Revenue Code, the property shall be operated at the
7 Kentucky location for the same time as if the property were
8 depreciated under Section 167 or 168 of the Internal Revenue Code;
9 and
10 2. In the business activities that are included within the NAICS industry
11 codes listed in subsection (1)(e) of this section.
12 (4) The eligible company shall file an application for preliminary approval with the
13 department prior to purchasing the qualifying system. The application shall be in
14 the form prescribed by the department and shall include:
15 (a) The name and address of the eligible company;
16 (b) A description of the eligible company's business activities and applicable
17 NAICS code;
18 (c) A description of the qualifying system and an explanation of how the
19 components thereof will be used by the eligible company in its business
20 activities;
21 (d) The estimated cost of the system;
22 (e) The business location where the system will be located;
23 (f) The date of anticipated purchase;
24 (g) The anticipated installation completion date; and
25 (h) Any other information the department may require.
26 (5) The department shall notify the eligible company that the application for
27 preliminary approval has been approved or denied.

1 (6) (a) To be eligible to receive a full refund, the approved company shall file a
2 request for a sales and use tax refund within sixty (60) days following the
3 completed installation of qualifying system.

4 (b) Failure to file a refund request within sixty (60) days shall result in an
5 adjustment to the refund amount paid as follows:

6 1. For late refund requests filed on or after the sixty-first day and prior
7 to the one hundred eighty-first day after the completed installation, for
8 each thirty (30) days, or portion thereof, that the refund request is late,
9 the refund amount shall be reduced by one-twelfth (1/12) of the total
10 amount determined by the department; and

11 2. Any refund request filed more than one hundred eighty (180) days
12 after the completed installation shall be rejected, and no refunds shall
13 be paid for the time period covered by the request.

14 (7) Interest shall not be allowed or paid on any sales and use tax refund made under
15 this section.

16 (8) (a) If the approved company does not operate the qualifying system at the
17 business location where the system was initially installed for the time period
18 required under subsection (3)(d)1. of this section, or in the manner required
19 under subsection (3)(d)2. of this section, the approved company shall notify
20 the department that the requirements of subsection (3) of this section have
21 not been met. The approved company shall repay the previously received
22 sales and use tax refunds plus interest at the rate established in KRS
23 131.183 computed from the date the refund was issued.

24 (b) If the approved company fails to pay the tax and interest within thirty (30)
25 days of the notification, the department shall apply all applicable penalties
26 provided in KRS 131.180.

27 ➔ Section 36. KRS 148.851 is amended to read as follows:

As used in ~~KRS 139.536 and~~ 148.851 to 148.860, unless the context clearly indicates otherwise:

(1) "Agreement" means the^[a] tourism development~~[attraction]~~ agreement entered into between~~[, pursuant to KRS 148.859, on behalf of]~~ the authority and an approved company~~[, with respect to a tourism attraction project];~~

(2) "Approved company" means any eligible company the has received final approval to receive incentives provided under Section 37 of this Act~~[approved by the secretary of the Tourism, Arts and Heritage Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project];~~

(3) "Approved costs" means the amount of eligible costs approved by the authority upon completion of the project~~;~~

~~(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;~~

~~(b) The costs of acquiring real property or rights in real property and any costs incidental thereto;~~

~~(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;~~

~~(d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;~~

- 1 ~~(e) All costs required to be paid under the terms of any contract for the~~
2 ~~acquisition, construction, equipping, and installation of a tourism attraction~~
3 ~~project;~~
- 4 ~~(f) All costs required for the installation of utilities, including but not limited to:~~
5 ~~water, sewer, sewer treatment, gas, electricity and communications, and~~
6 ~~including off-site construction of the facilities paid for by the approved~~
7 ~~company; and~~
- 8 ~~(g) All other costs comparable with those described in this subsection, excluding~~
9 ~~costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206,~~
10 ~~154.20-208, and 154.20-210;~~
- 11 ~~(4) "Authority" means the Kentucky Tourism Development Finance Authority as set~~
12 ~~forth in KRS 148.850];~~
- 13 **(5) "Cabinet" means the Tourism, Arts and Heritage Cabinet;**
- 14 **(6)** "Crafts and products center" means a facility primarily devoted to the display,
15 promotion, and sale of Kentucky products, and at which a minimum of eighty
16 percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or
17 agricultural products;
- 18 ~~(7)~~~~[(6)]~~ "Eligible company" means any corporation, limited liability company,
19 partnership, limited partnership, sole proprietorship, business trust, or any other
20 entity operating or intending to operate a tourism **development**~~[attraction]~~ project~~;~~
21 ~~whether owned or leased, within the Commonwealth that meets the standards~~
22 ~~promulgated by the secretary of the Tourism, Arts and Heritage Cabinet pursuant to~~
23 ~~KRS 148.855. An eligible company may operate or intend to operate directly or~~
24 ~~indirectly through a lessee];~~
- 25 **(8) "Eligible costs" means:**
- 26 **(a) Obligations incurred for labor and amounts paid too vendors, contractors,**
27 **subcontractors, builders, suppliers, deliverymen, and materialmen in**

1 connection with the acquisition, construction, equipping, and installation of
2 a tourism development project;

3 (b) The costs of acquiring real property or rights include the acquisition of real
4 property by a leasehold interest with a minimum term of ten (10) years, and
5 any costs incidental thereto;

6 (c) The cost of contract bonds and of insurance of all kinds that may be
7 required or necessary during the course of the acquisition, construction,
8 equipping, and installation of a tourism development project which is not
9 paid by the vendor, supplier, deliveryman, contractor, or otherwise
10 provided;

11 (d) All costs of architectural and engineering services, including but not limited
12 to estimates, plans and specifications, preliminary investigations, and
13 supervision of construction and installation, as well as for the performance
14 of all the duties required by or consequent to the acquisition, construction,
15 equipping, and installation of a tourism development project;

16 (e) All costs required to be paid under the terms of any contract for the
17 acquisition, construction, equipping, and installation of a tourism
18 development project;

19 (f) All costs required for the installation of utilities, including but not limited to
20 water, sewer, sewer treatment, gas, electricity and communications, and
21 including off-site construction of the facilities paid for by the approved
22 company; and

23 (g) All other costs comparable with those described in this subsection,
24 excluding costs subject to refund under KRS 154.20-202, 154.20-204,
25 154.20-206, 154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter
26 154;

- 1 ~~(9)~~~~(7)~~ "Entertainment destination center **project**" means a facility **that meets the**
2 **requirements of subsection (2)(b) of Section 37 of this Act**~~containing a minimum~~
3 ~~of two hundred thousand (200,000) square feet of building space adjacent or~~
4 ~~complementary to an existing tourism attraction, an approved tourism attraction~~
5 ~~project, or a major convention facility, and which provides a variety of~~
6 ~~entertainment and leisure options that contain at least one (1) major themed~~
7 ~~restaurant and at least three (3) additional entertainment venues, including but not~~
8 ~~limited to live entertainment, multiplex theaters, large format theaters, motion~~
9 ~~simulators, family entertainment centers, concert halls, virtual reality or other~~
10 ~~interactive games, museums, exhibitions, or other cultural and leisure time~~
11 ~~activities. Entertainment and food and drink options shall occupy a minimum of~~
12 ~~sixty percent (60%) of total gross area available for lease, and other retail stores~~
13 ~~shall occupy no more than forty percent (40%) of the total gross area available for~~
14 ~~lease];~~
- 15 ~~(10)~~~~(8)~~ "Final approval" means the action taken by the authority authorizing the
16 eligible company to receive **incentives**~~[inducements]~~ under KRS 139.536 and
17 148.851 to 148.860;
- 18 ~~(11)~~~~(9)~~ **"Full-service lodging facility" means a facility that provides overnight**
19 **sleeping accommodations, including private bathrooms and all of the following:**
20 **(a) On-site dining facilities;**
21 **(b) Room service;**
22 **(c) Catering; and**
23 **(d) Meeting space;**
- 24 ~~(12)~~ **"Incentives"**~~["Inducements"]~~ means the Kentucky sales tax refund as prescribed in
25 KRS 139.536;
- 26 ~~(13)~~ **"Kentucky sales tax" means the sales tax imposed by KRS 139.200;**
- 27 ~~(14)~~ **"Lodging facility project" means a full-service lodging facility that:**

1 (a) Is located on recreational property owned or leased by the Commonwealth
2 or the federal government;

3 (b) Involves the restoration or rehabilitation of a structure that:

4 1. Is listed individually on the National Register of Historic Places; or

5 2. Is located in the National Register Historic District; and

6 3. Is certified by the Kentucky Heritage Council as contributing to the
7 historic significance of the district, and the rehabilitation or
8 restoration of the structure has been approved in advance by the
9 Kentucky Heritage Council;

10 (c) Is an integral part of a major convention or sports facility;

11 (d) Is located:

12 1. Within a fifty (50) mile radius of a property listed on the National
13 Register of Historic Places with a current function of recreation and
14 culture; and

15 2. In any of the one hundred (100) least-populated counties in the
16 Commonwealth, in terms of population density, according to the most
17 recent census;

18 (e) Is located on property:

19 1. Owned by the Commonwealth, or leased by the Commonwealth from
20 the federal government;

21 2. Acquired for use in the state park system pursuant to KRS 148.028;
22 and

23 3. Operated by the Kentucky Department of Parks pursuant to KRS
24 148.021 or the Kentucky Horse Park Commission pursuant to KRS
25 148.258 to 148.320;

26 (f) Is located on property:

- 1 1. Owned or leased by the federal government and under the control of
2 the Department of the Interior; or
- 3 2. Owned by the Commonwealth and in the custody of the State Fair
4 Board as provided in KRS 247.140;
- 5 (g) Is part of a tourism attraction project, entertainment destination center
6 project, or theme restaurant destination attraction project and the full-
7 service lodging facility represents less than fifty percent (50%) of the total
8 eligible costs; or
- 9 (h) Has not less than five hundred (500) guest rooms;
- 10 (15) "Net positive fiscal impact" means the amount by which increased state tax
11 revenues will exceed the incentives given;
- 12 (16)~~[(10)]~~ "Preliminary approval" means the action taken by the authority conditionally
13 approving an~~[conditioning final approval by the authority upon satisfaction by the]~~
14 eligible company for the incentives under~~[of the requirements of]~~ KRS 139.536
15 and 148.851 to 148.860;
- 16 (17) "Recreational facility" means a structure or outdoor area that:
- 17 (a) Provides visitors recreational opportunities, including but not limited to
18 amusement parks, boating, hiking, horseback riding, hunting, fishing,
19 camping, wildlife viewing, live theater, rock climbing, and all-terrain
20 vehicle trails; and
- 21 (b) Serves as a likely destination where individuals who are not residents of the
22 Commonwealth would remain overnight in commercial lodging at or near
23 the recreational facility;
- 24 (18)~~[(11)]~~ "State agency" means any state administrative body, agency, department, or
25 ~~division as defined in KRS 42.005, or any board, commission, institution, or~~
26 ~~division exercising any function of the state that is not an independent municipal~~
27 ~~corporation or political subdivision;~~

(12)} "Theme restaurant destination attraction ***project***" means a restaurant facility that ***meets the requirements for incentives under subsection (2)(c) of Section 37 of this***

Act;

(a) ~~Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);~~

(b) ~~Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;~~

(c) ~~Is in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;~~

(d) ~~Has food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; and~~

(e) ~~1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;~~

~~2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or~~

~~3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction];~~

(19) (a)~~(13)}~~ "Tourism attraction ***project***" means:

1. A cultural or historical site;~~];~~

2. A ***recreational facility***;~~[recreation or]~~

3. ***An*** entertainment facility;~~];~~

4. An area of natural phenomenon or scenic beauty; ***or***

5. A Kentucky crafts and products center~~], a theme restaurant destination attraction, or an entertainment destination center.~~

1 ~~(a) A tourism attraction may include lodging facilities if:~~

- 2 ~~1. The facilities constitute a portion of a tourism attraction project and~~
3 ~~represent less than fifty percent (50%) of the total approved cost of the~~
4 ~~tourism attraction project, or the facilities are to be located on~~
5 ~~recreational property owned or leased by the Commonwealth or federal~~
6 ~~government and the facilities have received prior approval from the~~
7 ~~appropriate state or federal agency;~~
- 8 ~~2. The facilities involve the restoration or rehabilitation of a structure that~~
9 ~~is listed individually in the National Register of Historic Places or are~~
10 ~~located in a National Register Historic District and certified by the~~
11 ~~Kentucky Heritage Council as contributing to the historic significance of~~
12 ~~the district, and the rehabilitation or restoration project has been~~
13 ~~approved in advance by the Kentucky Heritage Council;~~
- 14 ~~3. The facilities involve the reconstruction, restoration, rehabilitation, or~~
15 ~~upgrade of a full-service lodging facility having not less than five~~
16 ~~hundred (500) guest rooms, with reconstruction, restoration,~~
17 ~~rehabilitation, or upgrade costs exceeding ten million dollars~~
18 ~~(\$10,000,000);~~
- 19 ~~4. The facilities involve the construction, restoration, rehabilitation, or~~
20 ~~upgrade of a full-service lodging facility which is or will be an integral~~
21 ~~part of a major convention or sports facility, with construction,~~
22 ~~restoration, rehabilitation, or upgrade costs exceeding six million dollars~~
23 ~~(\$6,000,000); or~~
- 24 ~~5. The facilities involve the construction, restoration, rehabilitation, or~~
25 ~~upgrade of a lodging facility which is or will be located:~~

1 a. ~~In the Commonwealth within a fifty (50) mile radius of a property~~
2 ~~listed on the National Register of Historic Places with a current~~
3 ~~function of recreation and culture; and~~

4 b. ~~Within any of the one hundred (100) least populated counties in~~
5 ~~the Commonwealth, in terms of population density, according to~~
6 ~~the most recent census];~~

7 (b) ~~[A-]~~ "Tourism attraction **project**" ~~does~~ ~~[shall]~~ not include ~~[the following:~~

8 1. ~~]~~ facilities that are primarily devoted to the retail sale of goods, other
9 ~~than [an entertainment destination center, a theme restaurant destination~~
10 ~~attraction,] a Kentucky crafts and products center, or a tourism attraction~~
11 ~~where the sale of goods is a secondary and subordinate component of the~~
12 ~~attraction[; and~~

13 2. ~~Recreational facilities that do not serve as a likely destination where~~
14 ~~individuals who are not residents of the Commonwealth would remain~~
15 ~~overnight in commercial lodging at or near the tourism attraction~~
16 ~~project]; and~~

17 (20)~~[(14)]~~ "Tourism **development**~~[attraction]~~ project"~~[or "project"]~~ means:

18 **(a) A tourism attraction project;**

19 **(b) A theme restaurant destination attraction project;**

20 **(c) An entertainment destination center project; or**

21 **(d) A lodging facility project**~~[the acquisition, including the acquisition of real~~
22 ~~estate by a leasehold interest with a minimum term of ten (10) years,~~
23 ~~construction, and equipping of a tourism attraction; the construction, and~~
24 ~~installation of improvements to facilities necessary or desirable for the~~
25 ~~acquisition, construction, and installation of a tourism attraction, including but~~
26 ~~not limited to surveys; installation of utilities, which may include water,~~
27 ~~sewer, sewage treatment, gas, electricity, communications, and similar~~

1 ~~facilities; and off-site construction of utility extensions to the boundaries of~~
2 ~~the real estate on which the facilities are located, all of which are to be used to~~
3 ~~improve the economic situation of the approved company in a manner that~~
4 ~~shall allow the approved company to attract persons].~~

5 ➔ Section 37. KRS 148.853 is amended to read as follows:

6 **(1)** The General Assembly finds and declares that:

7 **(a)** The general welfare and material well-being of the citizens of the
8 Commonwealth depend in large measure upon the development of tourism in
9 the Commonwealth; ~~and that~~

10 **(b)** It is in the best interest of the Commonwealth to **provide incentives**
11 ~~for~~~~induce~~ the creation of new **tourism attractions and**~~or~~ the expansion of
12 existing tourism attractions within the Commonwealth in order to advance the
13 public purposes of relieving unemployment by preserving and creating jobs
14 that would not exist if not for the **incentives**~~inducements to be~~ offered by the
15 authority to approved companies, and by preserving and creating sources of
16 tax revenues for the support of public services provided by the
17 Commonwealth; ~~and that~~

18 **(c)** The **authorities granted**~~authority prescribed~~ by ~~KRS 139.536 and~~ KRS
19 148.851 to 148.860, ~~and the purposes to be accomplished under the~~
20 ~~provisions of KRS 139.536 and KRS 148.851 to 148.860,~~ are proper
21 governmental and public purposes for which public moneys may be expended;
22 and

23 **(d)** That the ~~inducement of the~~ creation or expansion of tourism
24 **development**~~attraction~~ projects is of paramount importance mandating that
25 the provisions of KRS 139.536 and KRS 148.851 to 148.860 be liberally
26 construed and applied in order to advance public purposes.

1 (2) To qualify for incentives provided in KRS 148.851 to 148.860 and Section 42 of
2 this Act, the following requirements shall be met:

3 (a) For a tourism attraction project:

4 1. The total eligible costs shall exceed one million dollars (\$1,000,000);

5 2. In any year, including the first year of operation, the tourism
6 attraction project shall be open to the public at least one hundred
7 (100) days; and

8 3. In any year following the third year of operation, the tourism
9 attraction project shall attract at least twenty-five percent (25%) of its
10 visitors from among persons who are not residents of the
11 Commonwealth;

12 (b) For an entertainment destination center project:

13 1. The total eligible costs shall exceed five million dollars (\$5,000,000);

14 2. The facility shall contain a minimum of two hundred thousand
15 (200,000) square feet of building space adjacent or complementary to
16 an existing tourism attraction project or a major convention facility;

17 3. The incentives shall be dedicated to a public infrastructure purpose
18 that shall relate to the entertainment destination center project;

19 4. In any year, including the first year of operation, the entertainment
20 destination center project shall:

21 a. Be open to the public at least one hundred (100) days per year;

22 b. Maintain at least one (1) major theme restaurant and at least
23 three (3) additional entertainment venues, including but not
24 limited to live entertainment, multiplex theaters, large-format
25 theater, motion simulators, family entertainment centers, concert
26 halls, virtual reality or other interactive games, museums,
27 exhibitions, or other cultural and leisure-time activities; and

1 c. Maintain a minimum occupancy of sixty percent (60%) of the
2 total gross area available for lease with entertainment and food
3 and drink options not including the retail sale of tangible
4 personal property; and

5 5. In any year following the third year of operation, the entertainment
6 destination center project shall attract at least twenty-five percent
7 (25%) of its visitors from among persons who are not residents of the
8 Commonwealth;

9 (c) For a theme restaurant destination attraction project:

10 1. The total eligible costs shall exceed five million dollars (\$5,000,000);

11 2. In any year, including the first year of operation, the attraction shall:

12 a. Be open to the public at least three hundred (300) days per year
13 and for at least eight (8) hours per day; and

14 b. Generate no more than fifty percent (50%) of its revenue
15 through the sale of alcoholic beverages;

16 3. In any year following the third year of operation, the theme restaurant
17 destination attraction project shall attract a minimum of fifty percent
18 (50%) of its visitors from among persons who are not residents of the
19 Commonwealth; and

20 4. The theme restaurant destination attraction project shall:

21 a. At the time of final approval, offer a unique dining experience
22 that is not available in the Commonwealth within a one hundred
23 (100) mile radius of the attraction;

24 b. In any year, including the first year of operation, maintain
25 seating capacity of four hundred fifty (450) guests and offer live
26 music or live musical and theatrical entertainment during the

1 peak business hours that the facility is in operation and open to
2 the public; or
3 c. Within three (3) years of the completion date, the attraction shall
4 obtain a top two (2) tier rating by a nationally accredited service
5 and shall maintain a top two (2) tier rating through the term of
6 the agreement;
7 (d) For a lodging facility project:
8 1. a. The eligible costs shall exceed five million dollars (\$5,000,000)
9 unless the provisions of subdivision b. of this subparagraph
10 apply.
11 b. i. If the lodging facility is an integral part of a major
12 convention or sports facility, the eligible costs shall exceed
13 six million dollars (\$6,000,000); and
14 ii. If the lodging facility includes five hundred (500) or more
15 guest rooms, the eligible costs shall exceed ten million
16 dollars (\$10,000,000); and
17 2. In any year, including the first year of operation, the lodging facility
18 shall:
19 a. Be open to the public at least one hundred (100) days; and
20 b. Attract at least twenty-five percent (25%) of its visitors from
21 among persons who are not residents of the Commonwealth; and
22 (e) An expansion of any tourism development project shall in all cases be
23 treated as a new stand-alone project.
24 (3) The incentives offered under the Kentucky Tourism Development Act shall be as
25 follows:

1 (a) An approved company may be granted a sales tax incentive based on the
2 Kentucky sales tax imposed on sales generated by or arising at the tourism
3 development project; and

4 (b) 1. For a tourism development project other than a lodging facility project
5 described in subsection (14)(e) or (f) of Section 36 of this Act:

6 a. A sales tax incentive shall be allowed to an approved company
7 over the a period of ten (10) years; and

8 b. The sales tax incentive shall not exceed the lesser of the total
9 amount of the sales tax liability of the approved company and its
10 lessees or a percentage of the approved costs as specified by the
11 agreement, not to exceed twenty-five percent (25%);

12 2. For a lodging facility project described in subsection (14)(e) or (f) of
13 Section 36 of this Act:

14 a. A sales tax refund shall be allowed to the approved company
15 over a period of twenty (20) years; and

16 b. The sales tax incentive shall not exceed the lesser of total
17 amount of the sales tax liability of the approved company and its
18 lessees or a percentage of the approved costs as specified by the
19 agreement, not to exceed fifty percent (50%); and

20 3. Any unused incentives from a previous year may be carried forward to any
21 succeeding year during the term of the agreement until the entire specified
22 percentage of the approved costs has been received through sales tax
23 refunds.

24 ➔ Section 38. KRS 148.855 is amended to read as follows:

- 25 (1) The ~~{secretary of the Tourism, Arts and Heritage }~~cabinet shall promulgate
26 administrative regulations in accordance with KRS Chapter 13A to establish
27 standards for the making of applications for incentives~~[inducements]~~ and the

1 recommendation~~[to the authority]~~ of eligible companies and their tourism
2 development~~[attraction]~~ projects to the authority~~[by the promulgation of~~
3 ~~administrative regulations in accordance with KRS Chapter 13A].~~

4 (2) The ~~[secretary of the Tourism, Arts and Heritage]~~cabinet shall consult with the
5 authority when establishing standards to ensure that standards established pursuant
6 to subsection (1) of this section and KRS 148.857(1) do not conflict.

7 (3) (a) The application for incentives shall be filed with the cabinet and shall
8 include:

9 1. The name of the applicant;~~[With respect to each eligible company~~
10 ~~making an application to the secretary of the Tourism, Arts and Heritage~~
11 ~~Cabinet for inducements, and with respect to the tourism attraction~~
12 ~~project described in the application, the secretary of the Tourism, Arts~~
13 ~~and Heritage Cabinet shall make inquiries and request materials of the~~
14 ~~applicant that shall include, but not be limited to,]~~

15 2. Marketing plans for the tourism development project that target
16 individuals who are not residents of the Commonwealth;

17 3. A description and location of the tourism development project;

18 4. Capital and other anticipated expenditures for the tourism development
19 project that indicate that the total cost of the project shall exceed the
20 minimum required costs as provided in Section 37 of this Act~~[one~~
21 ~~million dollars (\$1,000,000), except for a theme restaurant destination~~
22 ~~attraction's project cost, which shall exceed five million dollars~~
23 ~~(\$5,000,000)], and the anticipated sources of funding therefor;~~

24 5. The anticipated employment and wages to be paid at the tourism
25 development project;

- 1 **6.** Business plans which indicate the average number of days in a year in
2 which the **tourism development** project will be in operation and open to
3 the public;~~[-and]~~
- 4 **7.** The anticipated revenues and expenses generated by the **tourism**
5 **development** project;~~[-]~~
- 6 **8.** If the tourism **development**~~[attraction]~~ project is an entertainment
7 destination center **project**, the **application shall include**~~[sales tax refund~~
8 ~~shall be dedicated to a public infrastructure purpose that shall relate to~~
9 ~~the tourism attraction project and shall be approved by the secretary of~~
10 ~~the Tourism, Arts and Heritage Cabinet. The applicant shall submit]the~~
11 public infrastructure purpose;**and**
- 12 **9. Any other information as required by the cabinet**~~[with its application].~~
- 13 **(b)** Based upon a review of these materials, if the~~[-secretary of the Tourism, Arts~~
14 ~~and Heritage]~~ cabinet determines that the eligible company and the **proposed**
15 tourism **development**~~[attraction]~~ project **appears to meet the requirements**
16 **established by Section 37 of this Act, and that the proposed tourism**
17 **development project** may reasonably satisfy the criteria for final approval in
18 subsection (4) of this section,~~[-then]~~ the secretary of the~~[-Tourism, Arts and~~
19 ~~Heritage]~~ cabinet may submit a written request to the authority **for**~~[requesting~~
20 ~~that the authority consider]~~ a preliminary approval of the eligible company and
21 the tourism **development**~~[attraction]~~ project.
- 22 **(4) The authority may review the request submitted by the secretary, including all**
23 **relevant materials, and may, based upon that review, grant preliminary approval**
24 **to an eligible company. Upon**~~[After receiving]~~ a preliminary approval by the
25 authority, the~~[-secretary of the Tourism, Arts and Heritage]~~ cabinet shall engage the
26 services of a competent consulting firm to analyze the data made available by the
27 eligible company and to collect and analyze additional information necessary to

determine that, in the independent judgment of the consultant, the **proposed** tourism **development**~~[attraction]~~ project:

(a) ~~Will~~[Shall] attract, **in all years following the third year of operation,** at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction **project**, which shall attract, **in all years following the third year of operation,** a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth;

(b) ~~Will~~[Shall] have costs in excess of **the minimum amount required by Section 37 of this Act**~~one million dollars (\$1,000,000)~~, except for a theme restaurant destination attraction, which shall have costs in excess of five million dollars ~~(\$5,000,000)~~;

(c) **1.** ~~Will~~[Shall] have a **net**~~[significant and]~~ positive fiscal~~[economic]~~ impact on the Commonwealth considering, among other factors, the extent to which the **proposed** tourism **devilmment**~~[attraction]~~ project will compete directly with existing tourism attractions **or previously approved tourism development projects** in the Commonwealth and the amount by which increased tax revenues from the tourism **development**~~[attraction]~~ project will exceed the **incentives**~~[credit]~~ given to the approved company **at the maximum level of recovery of approved costs as provided in Section 37 of this Act; or**

2. If the independent consultant determines that the proposed tourism development project cannot produce a net positive fiscal impact to the Commonwealth at the maximum level of recovery of approved costs as provided in Section 37 of this Act, the independent consultant shall determine the level of recovery, if any, at which the proposed tourism development project can meet those standards;

1 (d) ~~Will~~~~[Shall]~~ produce sufficient revenues and public demand to be operating
2 and open to the public for a minimum of one hundred (100) days per year,
3 except for a theme restaurant destination attraction, which shall be operating
4 and open to the public for a minimum of three hundred (300) days per year;~~;~~
5 ~~and]~~

6 (e) ~~Will~~~~[Shall]~~ not adversely affect existing employment in the Commonwealth;
7 and

8 (f) Meets all other requirements of Sections 36 and 37 of this Act.

9 (5) The independent consultant, in determining the amount of net positive fiscal
10 impact to the Commonwealth for a new proposed tourism development project
11 that is an expansion of an existing tourism development project shall not
12 consider positive fiscal impacts from the following sources:

13 (a) Increased operations at the previously approved tourism development
14 project that is being expanded by the proposed tourism development project;

15 (b) Increased operations at any other tourism development project approved for
16 incentives provided under Section 37 of this Act; or

17 (c) Increased operations at any project approved for tax increment financing
18 that includes state revenues approved pursuant to Subchapter 30 of KRS
19 Chapter 154.

20 (6) (a) The independent ~~consultant~~~~[consulting firm]~~ shall consult with the authority,
21 the Office of the State Budget Director and the Finance and Administration Cabinet
22 in the development of a report on the proposed tourism ~~development~~~~[attraction]~~
23 project.

24 (b) The Office of the State Budget Director and the Finance and Administration
25 Cabinet shall agree as to the methodology to be used and assumptions to be
26 made by the independent consultant in preparing its report.

1 (c) On the basis of the independent consultant's report and prior to any final
2 approval of a project by the authority, the Office of the State Budget Director
3 and the Finance and Administration Cabinet shall certify to the authority
4 whether there is a projected net positive fiscal~~[economic]~~ impact to the
5 Commonwealth and the expected amount of incremental state revenues from
6 the tourism development project. A final approval shall not be granted if it is
7 determined that there is no projected net positive fiscal~~[economic]~~ impact to
8 the Commonwealth.

9 ~~(7)~~~~(6)~~ The eligible company shall pay for the cost of the consultant's report and shall
10 cooperate with the consultant and provide all of the data that the consultant deems
11 necessary to make its determination under subsection (4) of this section.

12 ~~(8)~~~~(7)~~ *In lieu of the independent consultant analysis required in subsection (4) of*
13 *this section, if the eligible company is exempt from income tax under Section*
14 *501(c)(3) of the Internal Revenue Code and the estimated approved costs are less*
15 *than ten million dollars (\$10,000,000), the cabinet shall have the option of*
16 *performing an interagency review to analyze the data made available by the*
17 *eligible company and to collect and analyze additional information necessary to*
18 *determine that the proposed tourism development project meets the requirements*
19 *set forth in subsection (4)(a) of this section. The cabinet shall comply with the*
20 *same consulting and reporting requirements as an independent consultant.*

21 (9) After a review of relevant materials, the consultant's report, and completion of other
22 inquiries, the secretary~~[of the Tourism, Arts and Heritage Cabinet]~~ shall, by written
23 notification to the authority, provide a recommendation to the authority regarding
24 final approval of the tourism development~~[attraction]~~ project.

25 ➔ Section 39. KRS 148.857 is amended to read as follows:

- 1 (1) The authority shall establish standards for preliminary approval and final approval
2 of eligible companies and their projects by the promulgation of administrative
3 regulations in accordance with KRS Chapter 13A.
- 4 (2) The authority shall consult with the secretary~~[of the Tourism, Arts and Heritage~~
5 ~~cabinet]~~ when establishing standards to ensure that standards established pursuant
6 to KRS 148.855(1) and subsection (1) of this section do not conflict.
- 7 ~~(3)[At the written request of the secretary of the Tourism, Arts and Heritage Cabinet,~~
8 ~~the authority may, by resolution, give its preliminary approval by designating an~~
9 ~~eligible company as a preliminarily approved company and preliminarily~~
10 ~~authorizing the undertaking of the tourism attraction project.~~
- 11 ~~(4)[After[the adoption of]~~ the authority's preliminary approval, an agent designated by
12 the~~[Tourism, Arts and Heritage]~~ cabinet shall hold at least one (1) public hearing to
13 solicit public comments regarding the designation of an eligible company as a
14 preliminarily approved~~[company and the preliminary authorization for the~~
15 ~~undertaking of a tourism attraction project]~~. Notice of the public hearing shall be
16 given in accordance with KRS Chapter 424.
- 17 ~~(4)[(5)]~~ The authority shall review the report of the consultant prepared pursuant to
18 KRS 148.855(4), the recommendation of the secretary~~[of the Tourism, Arts and~~
19 ~~Heritage cabinet]~~, the report prepared by the agent documenting all comments, both
20 written and oral, received at the public hearing required by subsection ~~(3)[(4)]~~ of
21 this section, and other information that has been made available to the authority in
22 order to assist the authority in determining whether the tourism
23 development~~[attraction]~~ project will further the purposes of~~[KRS 139.536]~~ and
24 148.851 to 148.860.
- 25 ~~(5)[(6)]~~ The criteria for final approval of eligible companies and tourism
26 development~~[attraction]~~ projects shall include, but not be limited to, the criteria set

1 forth in KRS 148.855(4). **Final approval shall not be granted if it is determined**
2 **that there is no projected net positive fiscal impact to the Commonwealth.**

3 ~~(6)~~~~(7)~~ After a review of the consultant's report, the recommendation of the
4 secretary~~, [of the Tourism, Arts and Heritage cabinet]~~ and other information made
5 available to the authority, the authority, by resolution, may ~~give its final approval~~
6 ~~to the eligible company's application for a tourism attraction project and may~~ grant
7 to the eligible company the status of an approved company **and authorize the**
8 **execution of a tourism development project agreement as provided in Section 40**
9 **of this Act.** The decision reached by the authority shall be final and no appeal shall
10 be granted.

11 ~~(7)~~~~(8)~~ All meetings of the authority shall be held in accordance with KRS 61.805 to
12 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its
13 meetings to discuss matters exempt from the open meetings law and pertaining to
14 an eligible company.

15 ➔ Section 40. KRS 148.859 is amended to read as follows:

16 (1) The authority, upon adoption of its final approval, may enter into **a tourism**
17 **development agreement** with any approved company~~[an agreement with respect to~~
18 ~~its tourism attraction project]~~. The terms~~[and provisions]~~ of ~~the~~~~[each]~~ agreement
19 shall **be negotiated between the authority and the approved company and shall**
20 include~~[,]~~ but not be limited to:

21 (a) The amount of approved costs~~;~~~~[, which shall be determined by negotiations~~
22 ~~between the authority and the approved company.]~~

23 **(b) That** any increase in approved costs incurred by the approved company and
24 agreed to by the authority shall apply retroactively for purposes of calculating
25 the carry forward for unused **incentives**~~[inducements as set forth in KRS~~
26 ~~139.536(3) and (4) for tax years commencing on or after July 1, 2004];~~

1 ~~(c)(b)~~ A date certain by which the approved company shall have completed the
2 tourism **development**~~[attraction]~~ project;~~[- Upon request from any approved~~
3 ~~company that has received final approval prior to or after July 15, 2000.]~~

4 **(d) That** the authority **may**~~[shall]~~ grant an extension or change, which in no event
5 shall exceed three (3) years from the date of final approval, to the completion
6 date as specified in the agreement of an approved company;~~[-]~~

7 **(e) That** within three (3) months of the completion date, the approved company
8 shall document the actual cost of the **tourism development** project through a
9 certification of the costs to be provided by an independent certified public
10 accountant acceptable to the authority;

11 ~~(f)(c)~~ The **term of the tourism development agreement and the maximum**
12 **amount of recovery**~~[following provisions:~~

13 1. ~~For all tourism attraction projects except a tourism attraction project~~
14 ~~identified in subparagraph 2. of this paragraph, the term shall be ten (10)~~
15 ~~years from the later of:~~

16 a. ~~The date of the final approval of the project; or~~

17 b. ~~The original completion date specified in the agreement, if this~~
18 ~~completion date is within three (3) years of the date of the final~~
19 ~~approval of the project. An extension of the original completion~~
20 ~~date shall not alter the commencement date of the term;~~

21 2. ~~For a tourism attraction project that includes a facility, including but not~~
22 ~~limited to a lodging facility or shrine:~~

23 a. i. ~~Located on property owned by the Commonwealth, or leased~~
24 ~~by the Commonwealth from the federal government; and~~

25 ii. ~~Acquired for use in the state park system pursuant to the~~
26 ~~provisions of KRS 148.028, and operated by the Kentucky~~
27 ~~Department of Parks pursuant to the provisions of KRS~~

1 ~~148.021; or the Kentucky Horse Park Commission pursuant~~
2 ~~to the provision of KRS 148.258 to 148.320; or~~

3 b. ~~Located on property owned or leased by the federal government~~
4 ~~and identified as a national park;~~

5 ~~the term shall be twenty (20) years from the later of the date of the final~~
6 ~~approval of the project, or the original completion date specified in the~~
7 ~~agreement, if this completion date is within three (3) years of the date of~~
8 ~~the final approval of the project. An extension of the original completion~~
9 ~~date shall not alter the commencement date of the term];~~

10 (g) That~~[3. —]~~ within forty-five (45) days after the end of each fiscal year of the
11 approved company, during the term of the agreement, the approved company
12 shall supply the authority with~~[such]~~ reports and certifications as the authority
13 may request demonstrating to the satisfaction of the authority that the
14 approved company is in compliance with the provisions of KRS 139.536 and
15 KRS 148.851 to 148.860~~[. Based upon a review of these materials and other~~
16 ~~documents that may be made available, the authority shall then certify to the~~
17 ~~Department of Revenue that the approved company is in compliance with this~~
18 ~~section]; [and]~~

19 (h) That the approved company shall notify the authority if any change in
20 ownership of the tourism attraction is contemplated. The authority shall
21 reserve the option to renegotiate the terms of the agreement or if the change
22 in ownership is detrimental to the Commonwealth, the authority may
23 terminate the agreement;

24 (i) That~~[4.]~~ the approved company shall not receive a sales tax incentive~~[refund]~~
25 as prescribed by KRS 139.536 with respect to any fiscal year if the
26 requirements of subsection (2) of Section 37 of this Act have not been met;~~[-~~

1 a. ~~In any year following the fourth year of the agreement, the tourism~~
2 ~~attraction project fails to attract at least twenty-five percent (25%)~~
3 ~~of its visitors from among persons who are not residents of the~~
4 ~~Commonwealth, except for a theme restaurant destination~~
5 ~~attraction, which shall attract a minimum of fifty percent (50%) of~~
6 ~~its visitors from among persons who are not residents of the~~
7 ~~Commonwealth; or~~

8 b. ~~In any year following the first year of the agreement, the tourism~~
9 ~~attraction project is not operating and open to the public for at least~~
10 ~~one hundred (100) days; and]~~

11 **(j) That the authority may grant an extension of up to three (3) years to the**
12 **completion date in addition to the extension provided for in paragraph (d)**
13 **of this subsection, to**[(d) ~~Upon request from] an approved company that
14 has completed at least fifty percent (50%) of an entertainment destination
15 center **project**; ~~the authority shall grant an extension of up to three (3) years~~
16 ~~to the completion date specified in the agreement of the approved company, in~~
17 ~~addition to the extension provided for in paragraph (b) of this subsection.]~~~~

18 **(k) That** in no event shall the completion date be more than six (6) years from the
19 date of final approval; **and** ~~]~~

20 **(l) That** the extension provided for in ~~this~~ paragraph **(j) of this subsection** shall
21 be subject to the following conditions:

- 22 1. The approved company shall have spent or have contractually obligated
23 to spend an amount equal to or greater than the amount of approved
24 costs set forth in the initial agreement;
- 25 2. The term of the agreement shall not be extended; and

1 3. The scope of the entertainment destination center **project**, as set forth in
2 the initial agreement, shall not be altered to include new or additional
3 entertainment and leisure options.

4 (2) The agreement, **including the incentives provided under Section 37 of this Act,**
5 shall not be transferable or assignable by the approved company without the written
6 consent of the authority **and a passage of a resolution approving the proposed**
7 **assignee of the incentives as an approved company.**

8 ~~[(3) In consideration of the execution of the agreement as defined in KRS 148.851 and~~
9 ~~notwithstanding any provision of KRS 139.770 to the contrary, the approved~~
10 ~~company as defined in KRS 148.851 excluding its lessees, may be granted a sales~~
11 ~~tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS~~
12 ~~139.200 on the sales generated by or arising at the tourism attraction project as~~
13 ~~defined in KRS 148.851.]~~

14 ➔SECTION 41. A NEW SECTION OF KRS 148.851 TO 148.860 IS CREATED
15 TO READ AS FOLLOWS:

16 **(1) By October 1, 2010, and on or before October 1 of each year thereafter, the**
17 **authority shall file an annual report with the Legislative Research Commission.**
18 **The report shall also be available on the Tourism, Arts and Heritage Cabinet's**
19 **Web site.**

20 **(2) The report shall include information for all projects approved after the effective**
21 **date of this Act.**

22 **(3) The report shall include the following information:**

23 **(a) For each approved project:**

24 **1. The name of the approved company and a brief description of the**
25 **project;**

26 **2. The amount of approved costs included in the agreement;**

- 1 3. The maximum amount of incentives the approved company may
2 recover over the term of the agreement;
- 3 4. The term of the agreement; and
- 4 5. The total amount recovered under the agreement, reported for both
5 the prior fiscal year and cumulatively;
- 6 (b) The number of applications for projects submitted during the prior fiscal
7 year;
- 8 (c) The number of projects finally approved during the prior fiscal year; and
- 9 (d) The total dollar amount approved for recovery for all projects approved
10 during the prior fiscal year, and cumulatively under the Tourism
11 Development Act since its inception, by year of approval.
- 12 (4) The information required to be reported under this section shall not be
13 considered confidential taxpayer information and shall not be subject to KRS
14 Chapter 131 or any other provision of the Kentucky Revised Statutes prohibiting
15 disclosure or reporting of information.
- 16 ➔ Section 42. KRS 139.536 is amended to read as follows:
- 17 (1) As used in this section:
- 18 (a) "Agreement" means the same as defined in Section 36 of this Act;
- 19 (b) "Approved company" means the same as defined in Section 36 of this Act;
- 20 (c) "Approved costs" means the same as defined in Section 36 of this Act;
- 21 (d) "Authority" means the same as defined in Section 36 of this Act;
- 22 (e) "Cabinet" means the same as defined in Section 36 of this Act;
- 23 (f) "Secretary" means the secretary of the Tourism, Arts and Heritage
24 Cabinet; and
- 25 (g) "Tourism development project" means the same as defined in Section 36 of
26 this Act.

- 1 **(2)** (a) In consideration of the execution of the agreement~~[as defined in KRS~~
2 ~~148.851]~~ and notwithstanding any provision of KRS 139.770 to the contrary,
3 the approved company~~[as defined in KRS 148.851]~~ excluding its lessees, may
4 be granted a sales tax ***incentive based on***~~[refund from]~~ the Kentucky sales tax
5 imposed by KRS 139.200 on the sales generated by or arising at the tourism
6 ***development***~~[attraction]~~ project as ***provided in Section 37 of this Act***~~[defined~~
7 ~~in KRS 148.851]~~.
- 8 (b) The approved company shall have no obligation to refund or otherwise return
9 any amount of this sales tax refund to the persons from whom the sales tax
10 was collected.
- 11 ~~[(c) For all tourism attraction projects except those identified in paragraph (d) of~~
12 ~~this subsection, the term of the agreement granting the sales tax refund shall~~
13 ~~be ten (10) years.~~
- 14 ~~(d) The term of the agreement granting the sales tax refund shall be twenty (20)~~
15 ~~years for a tourism attraction project that includes a facility, including but not~~
16 ~~limited to a lodging facility or shrine that is:~~
- 17 1. ~~a. Located on property owned by the Commonwealth, or leased by~~
18 ~~the Commonwealth from the federal government; and~~
- 19 ~~b. Acquired for use in the state park system pursuant to the~~
20 ~~provisions of KRS 148.028, and operated by the Kentucky~~
21 ~~Department of Parks pursuant to the provisions of KRS 148.021 or~~
22 ~~the Kentucky Horse Park Commission pursuant to the provisions~~
23 ~~of KRS 148.258 to 148.320; or~~
- 24 2. ~~Located on property owned or leased by the federal government and~~
25 ~~identified as a national park.~~
- 26 ~~(e) This time period shall commence on the later of:~~
- 27 1. ~~The final approval for purposes of the inducements; or~~

1 2. ~~— The completion date specified in the agreement.]~~

2 ~~**(3) The authority shall notify the department upon approval of a tourism**~~
3 ~~**development project. The notification shall include the name of the approved**~~
4 ~~**company, the name of the tourism development project, the date on which the**~~
5 ~~**approved company is eligible to receive incentives under this section, the term of**~~
6 ~~**the agreement, the estimated approved costs, and the specified percentage of the**~~
7 ~~**approved costs that the approved company is eligible to receive and any other**~~
8 ~~**information that the department may require.**~~

9 ~~[(2) Any sales tax collected by an approved company as defined in KRS 148.851 on~~
10 ~~sales transacted after final approval but prior to the commencement of the term of~~
11 ~~the agreement, including any approved company that has received final approval~~
12 ~~prior to July 15, 2000, shall be refundable as if collected after the commencement of~~
13 ~~the term and applied to the approved company's first fiscal year's refund after~~
14 ~~activation of the term and without changing the term.~~

15 ~~(3) (a) The total sales tax refund allowed to the approved company over the term of~~
16 ~~the agreement in subsection (1)(c) of this section shall be equal to the lesser of~~
17 ~~the total amount of the sales tax liability of the approved company and its~~
18 ~~lessees or twenty-five percent (25%) of the approved costs.~~

19 ~~1. The sales tax refund shall accrue over the term of the agreement in an~~
20 ~~annual amount equal to two and one-half percent (2.5%) of the approved~~
21 ~~cost.~~

22 ~~2. Notwithstanding the foregoing two and one-half percent (2.5%)~~
23 ~~limitation, any unused inducements as set forth in KRS 148.851(9) from~~
24 ~~a previous year may be carried forward to any succeeding year during~~
25 ~~the term of the agreement until the entire twenty-five percent (25%) of~~
26 ~~the approved costs have been received through sales tax refunds.~~

1 ~~(b) The total sales tax refund allowed to the approved company over the term of~~
2 ~~the agreement in subsection (1)(d) of this section shall be equal to the lesser of~~
3 ~~the total amount of the sales tax liability of the approved company and its~~
4 ~~lessees or fifty percent (50%) of the approved costs.~~

5 ~~1. The sales tax refund shall accrue over the term of the agreement in an~~
6 ~~annual amount equal to two and one-half percent (2.5%) of the approved~~
7 ~~cost.~~

8 ~~2. Notwithstanding the foregoing two and one-half percent (2.5%)~~
9 ~~limitation, any unused inducements as set forth in KRS 148.851(9) from~~
10 ~~a previous year may be carried forward to any succeeding year during~~
11 ~~the term of the agreement until the entire fifty percent (50%) of the~~
12 ~~approved costs have been received through sales tax refunds.]~~

13 (4) **The sales tax incentive shall be reduced by the amount of vendor compensation**
14 **allowed under KRS 139.570**~~[Notwithstanding subsection (3) of this section, to the~~
15 ~~extent that the tourism attraction defined in KRS 148.851 includes a lodging facility~~
16 ~~located on recreational property owned or leased by the Commonwealth or federal~~
17 ~~government and the facilities have received prior approval from the appropriate~~
18 ~~state or federal agency, the total sales tax refund allowed to the approved company~~
19 ~~over the term of the agreement shall be the lesser of the total amount of sales tax~~
20 ~~liability or fifty percent (50%) of the approved costs. The sales tax refund shall~~
21 ~~accrue over the term of the agreement in an annual amount equal to five percent~~
22 ~~(5%) of the approved cost. Notwithstanding the foregoing five percent (5%)~~
23 ~~limitation, any unused inducements as set forth in KRS 148.851(9) from a previous~~
24 ~~year may be carried forward to any succeeding year during the term of the~~
25 ~~agreement until the entire fifty percent (50%) of the approved costs have been~~
26 ~~received through the sales tax refunds].~~

1 (5) *The approved company seeking the incentives shall execute information-sharing*
2 *agreements prescribed by the department with its lessees and other related parties*
3 *to verify the amount of sales tax eligible for the sales tax refund under this*
4 *section.*

5 (6) By October 1 of each year, the department shall certify to the authority and the
6 secretary~~[of the Commerce Cabinet for the preceding fiscal year for all approved~~
7 ~~companies for which sales tax returns were filed with respect to a tourism attraction~~
8 ~~project,]~~ the sales tax liability of the approved companies receiving
9 *incentives*~~[inducements]~~ under this section and KRS 148.851 to 148.860, and their
10 lessees, and the amount of the sales tax refunds issued pursuant to~~[subsections (1)~~
11 ~~and (4) of]~~ this section *for the preceding fiscal year.*

12 ~~(7)[(6)]~~ Interest shall not be allowed or paid on any refund made under the provisions
13 of this section.

14 ~~(8)[(7)]~~ The department may promulgate administrative regulations and require the
15 filing of forms designed by the department to reflect the intent of this section and
16 KRS 148.851 to 148.860.

17 ➔SECTION 43. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO
18 READ AS FOLLOWS:

19 *As used in Sections 43 to 45 of this Act:*

20 (1) *"Above-the-line production crew" means employees involved with the production*
21 *of a motion picture or entertainment production whose salaries are negotiated*
22 *prior to commencement of production, such as actors, directors, producers, and*
23 *writers;*

24 (2) *"Animated production" means a nationally distributed feature-length film*
25 *created with the rapid display of a sequence of images using 2-D or 3-D graphics*
26 *of artwork or model positions in order to create an illusion of movement;*

- 1 (3) "Approved company" means an eligible company approved for incentives
2 provided under Sections 44 and 47 of this Act;
- 3 (4) "Below-the-line production crew" means employees involved with the production
4 of a motion picture or entertainment production except above-the-line production
5 crew. "Below-the-line production crew" includes but is not limited to:
- 6 (a) Casting assistants;
7 (b) Costume design;
8 (c) Extras;
9 (d) Gaffers;
10 (e) Grips;
11 (f) Location managers;
12 (g) Production assistants;
13 (h) Set construction staff; and
14 (i) Set design staff;
- 15 (5) "Cabinet" means the Finance and Administration Cabinet;
- 16 (6) "Commercial" means an individual production or series of live-action or
17 animated productions, music videos, infomercials, or interstitials that are:
- 18 (a) Less than thirty-one (31) minutes in length;
19 (b) Made for the purpose of promoting a product, service, or idea; and
20 (c) Produced for regional or national distribution via broadcast, cable, or any
21 digital format, including but not limited to cable, satellite, Internet, or
22 mobile electronic devices;
- 23 (7) "Commonwealth" means the Commonwealth of Kentucky;
- 24 (8) "Compensation" means compensation included in adjusted gross income as
25 defined in KRS 141.010(10);
- 26 (9) "Documentary" means a production based upon factual information and not
27 subjective interjections;

- 1 (10) "Eligible company" means any person that intends to film or produce a motion
2 picture or entertainment production in the Commonwealth;
- 3 (11) "Employee" means the same as defined in KRS 141.010(20);
- 4 (12) "Feature-length film" means a live-action or animated production that is:
5 (a) More than thirty (30) minutes in length; and
6 (b) Produced for distribution in theaters or via digital format, including but not
7 limited to DVD, Internet, or mobile electronic devices;
- 8 (13) "Industrial film" means a business-to-business film that may be viewed by the
9 public, including but not limited to videos used for training or for viewing at a
10 trade show;
- 11 (14) (a) "Motion picture or entertainment production" means:
12 1. The following if filmed in whole or in part, or produced in whole or in
13 part, in the Commonwealth:
14 a. A feature-length film;
15 b. A television program;
16 c. An industrial film;
17 d. A documentary; or
18 e. A commercial; or
19 2. A national touring production of a Broadway show produced in
20 Kentucky;
- 21 (b) "Motion picture or entertainment production" does not include the filming
22 or production of obscene material or television coverage of news or athletic
23 events;
- 24 (15) "Obscene" means the same as defined in KRS 531.010;
- 25 (16) "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage
26 Cabinet;
- 27 (17) "Person" means the same as defined in KRS 141.010(15);

1 (18) (a) "Qualifying expenditure" means expenditures made in the Commonwealth
2 for the following if directly used in or for a motion picture or entertainment
3 production:

4 1. The production script and synopsis;

5 2. Set construction and operations, wardrobe, accessories, and related
6 services;

7 3. Lease or rental of real property in Kentucky as a set location;

8 4. Photography, sound synchronization, lighting, and related services;

9 5. Editing and related services;

10 6. Rental of facilities and equipment;

11 7. Vehicle leases;

12 8. Food; and

13 9. Accommodations.

14 (b) "Qualifying expenditure" does not include Kentucky sales and use tax paid
15 by the approved company on the qualifying expenditure;

16 (19) "Qualifying payroll expenditure" means compensation paid to above-the-line
17 crew and below-the line crew while working on a motion picture or entertainment
18 production in the Commonwealth if the compensation is for services performed
19 in the Commonwealth;

20 (20) "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;

21 (21) "Tax incentive agreement" means the agreement entered into pursuant to
22 Section 45 of this Act between the office and the approved company; and

23 (22) "Television program" means any live-action or animated production or
24 documentary, including but not limited to:

25 (a) An episodic series;

26 (b) A miniseries;

27 (c) A television movie; or

1 (d) A television pilot;

2 that is produced for distribution on television via broadcast, cable, or any digital
3 format, including but not limited to cable, satellite, Internet, or mobile electronic
4 devices.

5 ➔SECTION 44. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) The purposes of Sections 43 to 45 and 47 of this Act are to:

8 (a) Encourage the film and entertainment industry to choose locations in the
9 Commonwealth for the filming and production of motion picture or
10 entertainment productions;

11 (b) Encourage the development of a film and entertainment industry in
12 Kentucky;

13 (c) Encourage increased employment opportunities for the citizens of the
14 Commonwealth within the film and entertainment industry; and

15 (d) Encourage the development of a production and postproduction
16 infrastructure in the Commonwealth for film production and touring
17 Broadway show production facilities containing state-of-the-art
18 technologies.

19 (2) The Kentucky Film Office is hereby established in the Tourism, Arts and
20 Heritage Cabinet to administer, together with the Finance and Administration
21 Cabinet and the Tourism Development Finance Authority, the tax incentive
22 established by Sections 43 to 45 and 47 of this Act.

23 (3) To qualify for the tax incentive provided in subsection (4) of this section, the
24 following requirements shall be met:

25 (a) For an approved company that films or produces a motion picture
26 production, except for a commercial or documentary, the minimum

1 combined total of qualifying expenditures and qualifying payroll
2 expenditures shall be five hundred thousand dollars (\$500,000);

3 (b) For an approved company that films or produces a commercial in the
4 Commonwealth that is distributed regionally or nationally, the minimum
5 combined total of qualifying expenditures and qualifying payroll
6 expenditures shall be two hundred thousand dollars (\$200,000); and

7 (c) For an approved company that films or produces a documentary in the
8 Commonwealth or that produces a national touring production of a
9 Broadway show, the minimum combined total of qualifying expenditures
10 and qualifying payroll expenditures shall be fifty thousand dollars
11 (\$50,000).

12 (4) (a) The incentive available under Sections 43 to 45 and 47 of this Act is a
13 refundable credit against the Kentucky income tax imposed under KRS
14 141.020 or 141.040, and the limited liability entity tax imposed under KRS
15 141.0401, as provided in Section 47 of this Act. The amount of the incentive
16 shall not exceed:

17 1. Twenty percent (20%) of the approved company's qualifying
18 expenditures;

19 2. Twenty percent (20%) of the approved company's qualifying payroll
20 expenditures paid to below-the-line production crew; and

21 3. Twenty percent (20%) of the approved company's qualifying payroll
22 expenditures paid to above-the-line production crew not to exceed one
23 hundred thousand dollars (\$100,000) in payroll expenditures per
24 employee.

25 (b) The credit shall be available to approved companies with tax incentive
26 agreements executed after December 31, 2009, and before January 1, 2015.

1 ➔SECTION 45. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) An eligible company shall, at least thirty (30) days prior to incurring any
4 expenditure for which recovery will be sought, file an application for tax
5 incentives with the office. The application shall include:

6 (a) The name and address of the applicant;

7 (b) The production script or a detailed synopsis of the script;

8 (c) The anticipated date on which filming or production shall begin;

9 (d) The anticipated date on which the production will be completed;

10 (e) The total anticipated qualifying expenditures;

11 (f) The total anticipated qualifying payroll expenditures for above-the-line
12 crew;

13 (g) The total anticipated qualifying payroll expenditures for below-the-line
14 crew;

15 (h) The address of a Kentucky location at which records of the production will
16 be kept;

17 (i) An affirmation that if not for the incentive offered under Sections 43 to 45
18 of this Act, the eligible company would not film or produce the production
19 in the Commonwealth; and

20 (j) Any other information the office may require.

21 (2) The office shall notify the eligible company within thirty (30) days after receiving
22 the application of its status.

23 (3) Upon review of the application and any additional information submitted, the
24 office shall present the application and its recommendation to the Tourism
25 Development Finance Authority established by KRS 148.850 which may, by
26 resolution, authorize the execution of a tax incentive agreement between the
27 Tourism Development Finance Authority and the approved company.

1 (4) The tax incentive agreement shall include the following provisions:

2 (a) The duties and responsibilities of the parties;

3 (b) A detailed description of the motion picture or entertainment production for
4 which incentives are requested;

5 (c) The anticipated qualifying expenditures and qualifying payroll expenditures
6 for both above-the-line and below-the-line crews;

7 (d) The minimum combined total of qualifying expenditures and qualifying
8 payroll expenditures necessary for the approved company to qualify for
9 incentives;

10 (e) That the approved company shall have no more than two (2) years from the
11 date the tax incentive agreement is executed to start the motion picture or
12 entertainment production;

13 (f) That the approved company shall have no more than four (4) years from the
14 execution of the tax incentive agreement to complete the motion picture or
15 entertainment production;

16 (g) That the motion picture or entertainment production shall not include
17 obscene materials and shall not negatively impact the economy or the
18 tourism industry of the Commonwealth;

19 (h) That the execution of the agreement is not a guarantee of tax incentives and
20 that actual receipt of the incentives shall be contingent upon the approved
21 company meeting the requirements established by the tax incentive
22 agreement;

23 (i) That the approved company shall submit to the office within one hundred
24 (180) days of the completion of the motion picture or entertainment
25 production a detailed cost report of the qualifying expenditures, qualifying
26 payroll expenditures, and final script;

1 (j) That the approved company shall provide the office with documentation
2 that the approved company has withheld income tax as required by KRS
3 141.310 on all qualified payroll expenditures for which an incentive under
4 Sections 44 and 47 of this Act is sought;

5 (k) That, if the office determines that the approved company has failed to
6 comply with any of its obligations under the tax incentive agreement:

7 1. The office may deny the incentives available to the approved company;
8 2. Both the office and the cabinet may pursue any remedy provided
9 under the tax incentive agreement;
10 3. The office may terminate the tax incentive agreement; and
11 4. Both the office and the cabinet may pursue any other remedy at law to
12 which it may be entitled;

13 (l) That the office shall monitor the tax incentive agreement;

14 (m) That the approved company shall provide to the office and the cabinet all
15 information necessary to monitor the tax incentive agreement;

16 (n) That the office may share information with the cabinet or any other entity
17 the office determines is necessary for the purposes of monitoring and
18 enforcing the terms of the tax incentive agreement;

19 (o) That the motion picture or entertainment production shall contain an
20 acknowledgment that the motion picture production was filmed or the
21 touring show was produced in the Commonwealth of Kentucky;

22 (p) Terms of default;

23 (q) The method and procedures by which the approved company shall request
24 and receive the incentive provided under Sections 44 and 47 of this Act;

25 (r) That the approved company may be required to pay an administrative fee as
26 authorized under subsection (5) of this section; and

- 1 (s) Any other provisions deemed necessary or appropriate by the parties to the
2 tax incentive agreement.
- 3 (5) The office may require the approved company to pay an administrative fee, the
4 amount of which shall be established by administrative regulation promulgated
5 in accordance with KRS Chapter 13A. The administrative fee shall not exceed
6 one-half of one percent (0.5%) of the estimated amount of tax incentive sought or
7 five hundred dollars (\$500), whichever is greater.
- 8 (6) Prior to commencement of activity as provided in a tax incentive agreement, the
9 tax incentive agreement shall be submitted to the Government Contract Review
10 Committee established by Section 50 of this Act for review, as provided in
11 Sections 49, 50, and 51 of this Act.
- 12 (7) The office shall notify the cabinet upon approval of an approved company. The
13 notification shall include the name of the approved company, the name of the
14 motion picture or entertainment production, the estimated amount of qualifying
15 expenditures, the estimated date on which the approved company will complete
16 filming or production, and any other information required by the cabinet.
- 17 (8) Within one hundred eighty days (180) days of completion of the motion picture or
18 entertainment production, the approved company shall submit to the office a
19 detailed cost report of:
- 20 (a) Qualifying expenditures;
21 (b) Qualifying payroll expenditures for above-the-line crew;
22 (c) Qualifying payroll expenditures for below-the-line crew; and
23 (d) The final script.
- 24 (9) (a) The office, together with the secretary, shall review all information
25 submitted for accuracy and shall confirm that all relevant provisions of the
26 tax incentive agreement have been met.

1 (b) Upon confirmation that all requirements of the tax incentive agreement
2 have been met, the office, and the secretary shall review the final script, and
3 if they determine that the motion picture or entertainment production does
4 not:
5 1. Contain visual or implied scenes that are obscene; or
6 2. Negatively impact the economy or the tourism industry of the
7 Commonwealth;
8 the office shall forward the detailed cost report to the cabinet for calculation
9 of the refundable credit.
10 (10) The cabinet shall verify that the approved company withheld the proper amount
11 of income tax on qualifying payroll expenditures, and the cabinet shall notify the
12 office of the total amount of refundable credit available on qualifying
13 expenditures and qualifying payroll expenditures.
14 (11) On or before October 1, 2010, and on or before each October 1 thereafter, for the
15 immediately preceding fiscal year, the office shall report to the Tourism
16 Development Finance Authority:
17 (a) The number of tax incentive agreements that have been executed;
18 (b) The estimated amount of tax incentives that have been requested under
19 Sections 43 to 45 and 47 of this Act; and
20 (c) The amount of tax incentives approved under Sections 43 to 45 and 47 of
21 this Act and KRS 139.538.
22 (12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the
23 authority shall file an annual report with the Legislative Research
24 Commission. The report shall also be available on the Tourism, Arts and
25 Heritage Cabinet's Web site.
26 (b) The report shall include information for all motion picture or entertainment
27 production projects approved.

1 (c) The report shall include the following information:

2 1. For each approved motion picture or entertainment production
3 project:

4 a. The name of the approved company and a brief description of
5 the project;

6 b. The amount of approved costs included in the agreement; and

7 c. The total amount recovered under the tax incentive agreement;

8 2. The number of applications for projects submitted during the prior
9 fiscal year;

10 3. The number of projects finally approved during the prior fiscal year;
11 and

12 4. The total dollar amount approved for recovery for all projects
13 approved during the prior fiscal year, and cumulatively under Sections
14 43 to 45 and 47 of this Act since its inception, by year of approval.

15 (d) The information required to be reported under this section shall not be
16 considered confidential taxpayer information and shall not be subject to
17 KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes
18 prohibiting disclosure or reporting of information.

19 ➔SECTION 46. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) The Kentucky Film Commission is hereby established and administratively
22 attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet.

23 (2) The functions and purpose of the Kentucky Film Commission shall be:

24 (a) To serve in an advisory capacity to support the Tourism, Arts and Heritage
25 Cabinet in:

26 1. Promoting the growth of the film, television, and video production
27 industry within the Commonwealth;

- 1 2. Marketing and promoting Kentucky as a location destination for
2 motion picture productions throughout the Commonwealth for the
3 express purpose of economic development; and
- 4 3. Providing a broad base of industry-specific demographic, economic,
5 and informational support to the Tourism, Arts and Heritage Cabinet;
6 and
- 7 (b) To advise the Governor and members of the General Assembly on issues
8 relating to the Commonwealth's development and implementation of
9 programs to attract and encourage film, television, and video production in
10 the Commonwealth.
- 11 (3) (a) The commission shall consist of fifteen (15) members who shall be
12 appointed by the Governor.
- 13 (b) Initially, the Governor shall appoint:
- 14 1. Not more than four (4) members for a term of one (1) year;
15 2. Not more than four (4) members for a term of two (2) years;
16 3. Not more than four (4) members for a term of three (3) years; and
17 4. Not more than three (3) members for a term of four (4) years.
- 18 (c) Thereafter, the Governor shall make all appointments for a term of four (4)
19 years.
- 20 (d) The Governor shall appoint a chairman from among the members.
- 21 (4) The members of the commission shall serve without compensation but shall be
22 reimbursed for necessary travel expenses.
- 23 (5) The commission shall meet at the call of the chairman at locations within the
24 Commonwealth designated by the chairman.
- 25 (6) The commission, by majority vote, may appoint other nonvoting ex officio
26 members within the Commonwealth to assist the commission in achieving its
27 functions and purpose as described in subsection (2) of this section.

1 ➔ SECTION 47. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) As used in this section:

4 (a) "Above-the-line production crew" means the same as defined in Section 43
5 of this Act;

6 (b) "Approved company" means the same as defined in Section 43 of this Act;

7 (c) "Below-the-line production crew" means the same as defined in Section 43
8 of this Act;

9 (d) "Cabinet" means the same as defined in Section 43 of this Act;

10 (e) "Office" means the same as defined in Section 43 of this Act;

11 (f) "Qualifying expenditure" means the same as defined in Section 43 of this
12 Act;

13 (g) "Qualifying payroll expenditure" means the same as defined in Section 43
14 of this Act;

15 (h) "Secretary" means the same as defined in Section 43 of this Act; and

16 (i) "Tax incentive agreement" means the same as defined in Section 43 of this
17 Act.

18 (2) There is hereby created a refundable tax credit against the tax imposed under
19 KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as
20 provided in Section 30 of this Act.

21 (3) For tax incentive agreements executed after December 31, 2009, and before
22 January 1, 2015, an approved company may receive a refundable tax credit if:

23 (a) The cabinet has received notification from the office that the approved
24 company has satisfied all requirements of Sections 43 to 45 of this Act; and

25 (b) The approved company has provided a detailed cost report and sufficient
26 documentation to the office, which has been forwarded by the office to the
27 cabinet, that:

- 1 1. The purchases of qualifying expenditures were made after the
2 execution of the tax incentive agreement; and
- 3 2. The approved company has withheld income tax as required by KRS
4 141.310 on all qualified payroll expenditures.
- 5 (4) The refundable tax credit shall not apply until the taxable year in which the
6 secretary notifies the approved company of the amount of refundable credit that
7 is available.
- 8 (5) Interest shall not be allowed or paid on any refundable credits provided under
9 this section.
- 10 (6) The cabinet shall promulgate administrative regulations in accordance with KRS
11 Chapter 13A to administer this section.
- 12 (7) On or before September 1, 2010, and on or before each September 1 thereafter,
13 for the immediately preceding fiscal year, the cabinet shall report to the office the
14 name of the approved companies and the amount of refundable income tax credit
15 claimed.
- 16 ➔Section 48. KRS 45A.690 is amended to read as follows:
- 17 (1) As used in KRS 45A.690 to 45A.725:
- 18 (a) "Committee" means the Government Contract Review Committee of the
19 Legislative Research Commission;
- 20 (b) "Contracting body" means each state board, bureau, commission, department,
21 division, authority, university, college, officer, or other entity, except the
22 Legislature, authorized by law to contract for personal services. "Contracting
23 body" includes the Tourism Development Finance Authority with regard to
24 tax incentive agreements;
- 25 (c) "Governmental emergency" means an unforeseen event or set of
26 circumstances that creates an emergency condition as determined by the
27 committee by promulgation of an administrative regulation;

1 (d) "Memorandum of agreement" means any memorandum of agreement,
2 memorandum of understanding, program administration contract, interlocal
3 agreement to which the Commonwealth is a party, privatization contract, or
4 similar device relating to services between a state agency and any other
5 governmental body or political subdivision of the Commonwealth that
6 involves an exchange of resources or responsibilities to carry out a
7 governmental function. It includes agreements by regional cooperative
8 organizations formed by local boards of education or other public educational
9 institutions for the purpose of providing professional educational services to
10 the participating organizations and agreements with Kentucky Distinguished
11 Educators pursuant to KRS 158.782. This definition does not apply to:

- 12 1. Agreements between the Transportation Cabinet and any political
13 subdivision of the Commonwealth for road and road-related projects;
- 14 2. Agreements between the Auditor of Public Accounts and any other
15 governmental agency or political subdivision of the Commonwealth for
16 auditing services;
- 17 3. Agreements between state agencies as required by federal or state law;
- 18 4. Agreements between state agencies and state universities or colleges and
19 agreements between state universities or colleges and employers of
20 students in the Commonwealth work-study program sponsored by the
21 Kentucky Higher Education Assistance Authority;
- 22 5. Agreements involving child support collections and enforcement;
- 23 6. Agreements with public utilities, providers of direct Medicaid health
24 care to individuals except for any health maintenance organization or
25 other entity primarily responsible for administration of any program or
26 system of Medicaid managed health care services established by law or

- 1 by agreement with the Cabinet for Health and Family Services, and
2 transit authorities;
- 3 7. Nonfinancial agreements;
- 4 8. Any obligation or payment for reimbursement of the cost of corrective
5 action made pursuant to KRS 224.60-140;
- 6 9. Exchanges of confidential personal information between agencies;
- 7 10. Agreements between state agencies and rural concentrated employment
8 programs; or
- 9 11. Any other agreement that the committee deems inappropriate for
10 consideration;
- 11 (e) **"Motion picture or entertainment production" means the same as defined**
12 **in Section 43 of this Act;**
- 13 **(f)** "Multicontract" means a group of personal service contracts between a
14 contracting body and individual vendors providing the same or substantially
15 similar services to the contracting body that, for purposes of the committee,
16 are treated as one (1) contract; ~~and~~
- 17 **(g)**~~(f)~~ "Personal service contract" means an agreement whereby an individual,
18 firm, partnership, or corporation is to perform certain services requiring
19 professional skill or professional judgment for a specified period of time at a
20 price agreed upon. It includes all price contracts for personal services between
21 a governmental body or political subdivision of the Commonwealth and any
22 other entity in any amount. This definition does not apply to:
- 23 1. Agreements between the Department of Parks and a performing artist or
24 artists for less than five thousand dollars (\$5,000) per fiscal year per
25 artist or artists;
- 26 2. Agreements with public utilities, foster care parents, providers of direct
27 Medicaid health care to individuals except for any health maintenance

1 organization or other entity primarily responsible for administration of
2 any program or system of Medicaid managed health care services
3 established by law or by agreement with the Cabinet for Health and
4 Family Services, individuals performing homemaker services, and
5 transit authorities;

6 3. Agreements between state universities or colleges and employers of
7 students in the Commonwealth work study program sponsored by the
8 Kentucky Higher Education Assistance Authority;

9 4. Agreements between a state agency and rural concentrated employment
10 programs;

11 5. Agreements between the State Fair Board and judges, officials, and
12 entertainers contracted for events promoted by the State Fair Board; or

13 6. Any other contract that the committee deems inappropriate for
14 consideration;

15 **(h) "Tax incentive agreement" means an agreement executed under Section 45**
16 **of this Act; and**

17 **(i) "Tourism Development Finance Authority" means the authority**
18 **established by KRS 148.850.**

19 (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense
20 with the requirements of any other law necessary to make the personal service
21 contract or memorandum of agreement valid.

22 ➔Section 49. KRS 45A.695 is amended to read as follows:

23 (1) Except as provided in subsection (8) of this section, no one shall begin work on a
24 personal service contract entered into by any contracting body **or incur**
25 **expenditures under a tax incentive agreement**~~[,]~~ until notification of the personal
26 service contract **or tax incentive agreement** is filed with the committee. Each

1 personal service contract shall have a cancellation clause not to exceed thirty (30)
2 days notice to the contractee.

3 (2) Each personal service contract, tax incentive agreement, and memorandum of
4 agreement shall be filed with the committee prior to the effective date and shall be
5 accompanied by a completed proof of necessity form as established by the
6 committee by promulgation of an administrative regulation, or equivalent
7 information if submitted electronically. The proof of necessity form shall document:

8 (a) The need for the service or benefit to the Commonwealth of the tax incentive
9 agreement;

10 (b) For personal service contracts and memoranda of agreement, the
11 unavailability of state personnel or the nonfeasibility of utilizing state
12 personnel to perform the service;

13 (c) The total projected cost of the contract or agreement and source of funding;

14 (d) The total projected duration of the contract or tax incentive agreement;

15 (e) Payment information, in detail;

16 (f) In the case of memoranda of agreement or similar device, the reason for
17 exchanging resources or responsibilities; and

18 (g) Such other information as the committee deems appropriate.

19 (3) Adequate notice of the need for a personal service contract shall be given by the
20 contracting body through a request for proposals. The request for proposals shall
21 describe the services required, list the type of information and data required of each
22 offeror, and state the relative importance of particular qualifications.

23 (4) The head of the contracting body or his or her designee may conduct discussions
24 with any offeror who has submitted a proposal to determine the offeror's
25 qualifications for further consideration. Discussions shall not disclose any
26 information derived from proposals submitted by other offerors.

- 1 (5) Award shall be made to the offeror determined by the head of the contracting body,
2 or his or her designee, to be the best qualified of all offerors based on the
3 evaluation factors set forth in the request for proposals and the negotiation of fair
4 and reasonable compensation. If compensation cannot be agreed upon with the best
5 qualified offeror and if proposals were submitted by one (1) or more other offerors
6 determined to be qualified, negotiations may be conducted with the other offeror or
7 offerors in the order of their respective qualification ranking. In this case, the
8 contract may be awarded to the next best ranked offeror for a fair and reasonable
9 compensation. All determinations of the qualification rankings of offerors by the
10 head of the contracting body or a designee of the officer based on evaluation factors
11 set forth in the request for proposals shall be made in writing. Written
12 documentation shall be maintained concerning the final results of negotiation with
13 each vendor and reasoning as to why each vendor was chosen.
- 14 (6) The committee shall maintain a record or have readily accessible records of the date
15 on which each personal service contract, tax incentive agreement, and
16 memorandum of agreement was received and shall maintain or have access to
17 electronic or paper files on all personal service contracts, tax incentive agreements,
18 and memoranda of agreement. Except for records exempt from inspection under
19 KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and
20 memoranda of agreement shall be made available for public inspection.
- 21 (7) Payment on personal service contracts, tax incentive agreements, and memoranda
22 of agreement submitted to the committee for approval shall not be made for services
23 rendered or projects undertaken after committee disapproval, unless the decision of
24 the committee is overridden by the secretary of the Finance and Administration
25 Cabinet or agency head, if the agency has been granted delegation authority by the
26 secretary of the Finance and Administration Cabinet. All personal service contracts,
27 tax incentive agreements, and memoranda of agreement shall contain a provision

1 that stipulates that payments on personal service contracts and memoranda of
2 agreement shall not be authorized for services rendered after committee
3 disapproval, unless the decision of the committee is overridden by the secretary of
4 the Finance and Administration Cabinet or agency head, if the agency has been
5 granted delegation authority.

6 (8) In the event of a governmental emergency as defined under KRS 45A.690, work
7 may begin prior to filing notification of the personal service contract with the
8 committee, if the secretary of the Finance and Administration Cabinet or his
9 designee determines that the time involved in the normal review process would be
10 detrimental to the Commonwealth's ability to act or procure the services and the
11 normal process will not accommodate the governmental emergency. Payment shall
12 not be made until written notification and explanation of the reasons for this action
13 are forwarded to the committee.

14 (9) If a governmental emergency exists as defined under KRS 45A.690 and work is
15 authorized to begin on a personal service contract immediately, a copy of a
16 statement, approved by the secretary of the Finance and Administration Cabinet or
17 his designee, setting forth in detail the nature of the emergency shall be filed with
18 the committee, along with a copy of the personal service contract.

19 ➔Section 50. KRS 45A.705 is amended to read as follows:

20 (1) There is hereby created a permanent committee of the Legislative Research
21 Commission to be known as the Government Contract Review Committee. The
22 committee shall be composed of eight (8) members appointed as follows: three (3)
23 members of the Senate appointed by the President of the Senate; one (1) member of
24 the minority party in the Senate appointed by the Minority Floor Leader in the
25 Senate; three (3) members of the House of Representatives appointed by the
26 Speaker of the House of Representatives; and one (1) member of the minority party
27 in the House of Representatives appointed by the Minority Floor Leader in the

- 1 House of Representatives. Members shall serve for terms of two (2) years, and the
2 members appointed from each chamber shall elect one (1) member from their
3 chamber to serve as co-chair. Any vacancy that may occur in the membership of the
4 committee shall be filled by the appointing authority who made the original
5 appointment.
- 6 (2) On an alternating basis, each co-chair shall have the first option to set the monthly
7 meeting date. A monthly meeting may be canceled by agreement of both co-chairs.
8 The co-chairs shall have joint responsibilities for committee meeting agendas and
9 presiding at committee meetings. A majority of the entire membership of the
10 Government Contract Review Committee shall constitute a quorum, and all actions
11 of the committee shall be by vote of a majority of its entire membership. The
12 members of the committee shall be compensated for attending meetings, as
13 provided in KRS 7.090(3).
- 14 (3) Any professional, clerical, or other employees required by the committee shall be
15 provided in accordance with the provisions of KRS 7.090(4) and (5).
- 16 (4) All proposed personal service contracts, tax incentive agreements, and memoranda
17 of agreement received by the Legislative Research Commission shall be submitted
18 to the committee to:
- 19 (a) Examine the stated need for the service or benefit to the Commonwealth of
20 the motion picture or entertainment production;
21 (b) Examine whether the service could or should be performed by state personnel,
22 for personal service contracts and memoranda of agreement;
23 (c) Examine the amount and duration of the contract or agreement; and
24 (d) Examine the appropriateness of any exchange of resources or responsibilities.
- 25 (5) If the committee determines that the contract service or agreement, other than an
26 emergency contract approved by the secretary of the Finance and Administration
27 Cabinet or his or her designee, is not needed or inappropriate, the motion picture

1 *or entertainment production is not beneficial or is inappropriate*, the service could
2 or should be performed by state personnel, the amount or duration is excessive, or
3 the exchange of resources or responsibilities are inappropriate, the committee shall
4 attach a written notation of the reasons for its disapproval or objection to the
5 personal service contract, *tax incentive agreement*, or memorandum of agreement
6 and shall return the personal service contract, *tax incentive agreement*, or
7 memorandum of agreement to the secretary of the Finance and Administration
8 Cabinet or his *or her* designee. The committee shall act on a personal service
9 contract, *tax incentive agreement*, or memorandum of agreement submitted to the
10 Legislative Research Commission within forty-five (45) days of the date received.

11 (6) Upon receipt of the committee's disapproval or objection to a personal service
12 contract, *tax incentive agreement*, or memorandum of agreement, the secretary of
13 the Finance and Administration Cabinet or his *or her* designee shall determine
14 whether the personal service contract, *tax incentive agreement*, or memorandum of
15 agreement shall:

16 (a) Be revised to comply with the objections of the committee;
17 (b) Be canceled and, if applicable, payment allowed for services rendered under
18 the contract or amendment; or
19 (c) Remain effective as originally approved.

20 (7) The secretary of the Finance and Administration Cabinet or his *or her* designee
21 shall notify the committee of the action taken on personal service contracts, *tax*
22 *incentive agreements*, and memoranda of agreement disapproved or objected to
23 within ten (10) days from the date the personal service contracts, *tax incentive*
24 *agreement*, or memoranda of agreement were reviewed by the committee.

25 (8) Contracting bodies shall make annual reports to the committee not later than
26 December 1 of each year. The committee shall establish reporting procedures for
27 contracting bodies related to personal service contracts, *tax incentive agreements*,

1 and memoranda of agreement submitted by the secretary of the Finance and
2 Administration Cabinet or his or her designee.

3 ➔Section 51. KRS 45A.725 is amended to read as follows:

4 (1) The Government Contract Review Committee may establish policies and
5 procedures concerning the manner and form of notification and the documentation
6 to accompany the proposed personal service contract, tax incentive agreement, or
7 memorandum of agreement.

8 (2) Nothing in this code shall prohibit the committee from accepting personal service
9 contracts, tax incentive agreement, or memoranda of agreement through the use of
10 electronic instrumentalities.

11 ➔Section 52. KRS 141.310 is amended to read as follows:

12 (1) Every employer making payment of wages on or after January 1, 1971, shall deduct
13 and withhold upon the wages a tax determined under KRS 141.315 or by the tables
14 authorized by KRS 141.370.

15 (2) If wages are paid with respect to a period which is not a payroll period, the amount
16 to be deducted and withheld shall be that applicable in the case of a miscellaneous
17 payroll period containing a number of days, including Sundays and holidays, equal
18 to the number of days in the period with respect to which the wages are paid.

19 (3) If wages are paid by an employer without regard to any payroll period or other
20 period, the amount to be deducted and withheld shall be that applicable in the case
21 of a miscellaneous payroll period containing a number of days equal to the number
22 of days, including Sundays and holidays, which have elapsed since the date of the
23 last payment of wages by the employer during the calendar year, or the date of
24 commencement of employment with the employer during the year, or January 1 of
25 the year, whichever is the later.

26 (4) In determining the amount to be deducted and withheld under this section, the
27 wages may, at the election of the employer, be computed to the nearest dollar.

- 1 (5) The tables mentioned in subsection (1) of this section shall consider the standard
2 deduction.
- 3 (6) The department may permit the use of accounting machines to calculate the proper
4 amount to be deducted from wages when the calculation produces substantially the
5 same result as set forth in the tables authorized by KRS 141.370. Prior approval of
6 the calculation shall be secured from the department at least thirty (30) days before
7 the first payroll period for which it is to be used.
- 8 (7) The department may, by administrative regulations, authorize employers:
- 9 (a) To estimate the wages which will be paid to any employee in any quarter of
10 the calendar year;
- 11 (b) To determine the amount to be deducted and withheld upon each payment of
12 wages to the employee during the quarter as if the appropriate average of the
13 wages estimated constituted the actual wages paid; and
- 14 (c) To deduct and withhold upon any payment of wages to the employee during
15 the quarter the amount necessary to adjust the amount actually deducted and
16 withheld upon the wages of the employee during the quarter to the amount
17 that would be required to be deducted and withheld during the quarter if the
18 payroll period of the employee was quarterly.
- 19 (8) The department may provide by regulation, under the conditions and to the extent it
20 deems proper, for withholding in addition to that otherwise required under this
21 section and KRS 141.315 in cases in which the employer and the employee agree to
22 the additional withholding. The additional withholding shall for all purposes be
23 considered tax required to be deducted and withheld under this chapter.
- 24 (9) Effective January 1, 1992, any employer required by this section to withhold
25 Kentucky income tax who assesses and withholds from employees the job
26 assessment fee provided in KRS 154.24-110 may offset a portion of the fee against
27 the Kentucky income tax required to be withheld from the employee under this

1 section. The amount of the offset shall be four-fifths (4/5) of the amount of the
2 assessment fee withheld from the employee or the Commonwealth's contribution of
3 KRS 154.24-110(3) applies. If the provisions in KRS 154.24-150(3) or (4) apply,
4 the offset, the offset shall be one hundred percent (100%) of the assessment.

5 (10) Any employer required by this section to withhold Kentucky income tax who
6 assesses and withholds from employees an assessment provided in KRS 154.22-070
7 or KRS 154.28-110 may offset the fee against the Kentucky income tax required to
8 be withheld from the employee under this section.

9 (11) Any employer required by this section to withhold Kentucky income tax who
10 assesses and withholds from employees the job assessment fee provided in KRS
11 154.26-100 may offset a portion of the fee against the Kentucky income tax
12 required to be withheld from the employee under this section. The amount of the
13 offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from
14 the employee, or if the agreement under KRS 154.26-090(1)(f)2. is consummated,
15 the offset shall be one hundred percent (100%) of the assessment fee.

16 (12) Any employer required by this section to withhold Kentucky income tax who
17 assesses and withholds from employees the job development assessment fee
18 provided in KRS 154.23-055 may offset a portion of the fee against the Kentucky
19 income tax required to be withheld from the employee under this section. The
20 amount of the offset shall be equal to the Commonwealth's contribution as
21 determined by KRS 154.23-055(1) to (3).

22 (13) Any employer required by this section to withhold Kentucky income tax who
23 assesses and withholds from employees the job development assessment fee
24 provided in Section 18 of this Act may offset the state portion of the assessment
25 against the Kentucky income tax required to be withheld from the employee
26 under this section.

1 **(14)** Any employer required by this section to withhold Kentucky income tax may be
2 required to post a bond with the department. The bond shall be a corporate surety
3 bond or cash. The amount of the bond shall be determined by the department, but
4 shall not exceed fifty thousand dollars (\$50,000).

5 **(15)**~~**(14)**~~ Any employer required by this section to withhold Kentucky income tax who
6 assesses and withholds from employees an assessment provided in KRS 154.27-080
7 may offset the assessment against the Kentucky income tax required to be withheld
8 from the employee under this section.

9 **(16)**~~**(15)**~~ The Commonwealth may bring an action for a restraining order or a temporary
10 or permanent injunction to restrain or enjoin the operation of an employer's business
11 until the bond is posted or the tax required to be withheld is paid or both. The action
12 may be brought in the Franklin Circuit Court or in the Circuit Court having
13 jurisdiction of the defendant.

14 ➔Section 53. KRS 141.350 is amended to read as follows:

15 The amount deducted and withheld as tax under KRS 141.310 and 141.315 during any
16 calendar year upon the wages of any individual and the amount of credit described in
17 KRS 154.22-070(2), 154.23-055, 154.24-110, 154.24-150(3) and (4), 154.26-100(2),
18 154.27-080, **Section 18 of this Act**, or 154.28-110 shall be allowed as a credit to the
19 recipient of the income against the tax imposed by KRS 141.020, for taxable years
20 beginning in the calendar year. If more than one (1) taxable year begins in the calendar
21 year, the amount shall be allowed as a credit against the tax for the last taxable year so
22 beginning.

23 ➔SECTION 54. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO
24 READ AS FOLLOWS:

25 **For the purposes of this chapter and KRS Chapter 178 on and after July 1, 2010,**
26 **railroad crossings, railroad spurs that access industrial parks, and shortline railroads**
27 **at or near intersections with roadways shall be considered roads. The industrial access**

road fund within the Transportation Cabinet and other funds specified by the secretary or requested by the secretary of the Cabinet for Economic Development may be used for their maintenance and repair.

➔SECTION 55. A NEW SECTION OF KRS 148.851 TO 148.860 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Legacy expansion project" means an expansion project approved under this section; and

(b) "Premier event" means a sports event that:

1. Is in the premier series or top sanctioned level of all similar types of events staged on a national basis; and

2. Is broadcast nationally.

(2) The purpose of this section is to encourage the location of premier events in the Commonwealth.

(3) To qualify for incentives under this section, an eligible company or its assignee shall:

(a) Have an existing project under KRS 148.851 to 148.860 that was approved prior to the effective date of this Act;

(b) Invest a minimum of thirty million dollars (\$30,000,000) in the expansion of the previously approved project;

(c) Present one (1) or more new premier events on an annual basis at the legacy expansion project site. As used in this paragraph, "new premier event" means a premier event that was not presented at the existing project prior to approval of the legacy expansion project; and

(d) Include a facility with a permanent seating capacity of sixty-five thousand (65,000) or more, where premier events will be held.

1 (4) An approved company meeting the requirements established by subsection (3) of
2 this section shall be eligible to recover the following:

3 (a) Up to twenty-five percent (25%) of the approved costs expended for the
4 legacy expansion project; and

5 (b) One hundred percent (100%) of any amounts outstanding under the
6 agreement for the original project between the approved company, or any
7 assignee of the approved company, and the authority.

8 (5) To obtain the incentives authorized pursuant to this section, an eligible company
9 that meets the requirements of subsection (3) of this section shall file an
10 application for a legacy expansion project with the authority. The legacy
11 expansion project shall be reviewed and evaluated as a new project under KRS
12 148.851 to 148.860, and the application and review process established in KRS
13 148.851 to 148.860 shall apply, except as otherwise provided in this section. The
14 cabinet may establish requirements and guidelines for the review and approval of
15 projects under this section that are different from, or in addition to the
16 requirements and guidelines established for the review of projects in general
17 under KRS 148.851 to 148.860.

18 (6) (a) The application required under subsection (5) of this section shall include a
19 plan describing the eligible company's efforts to promote the hiring of
20 Kentucky residents to be employed in the construction and operation of the
21 legacy expansion project.

22 1. The plan shall be submitted in a format, and with sufficient detail to
23 demonstrate that the eligible company has evaluated the following
24 factors in the development of its plan:

25 a. An analysis of its specific need to employ particular occupations,
26 skills, trades, and technical expertise in the construction and
27 operation of the legacy expansion project;

1 **b. An estimate of the total number of individuals expected to be**
2 **employed in the construction and operation of the legacy**
3 **expansion project, which shall include a categorization of**
4 **construction phase and operational phase employment**
5 **projections;**

6 **c. An analysis of the specific need to employ individuals skilled in**
7 **specialized tasks or in the operation of specialized equipment**
8 **unique to the construction or operation of the legacy expansion**
9 **project, together with an evaluation of the availability of**
10 **sufficiently skilled laborers within the Commonwealth who may**
11 **be employed to perform the specialized tasks identified or to work**
12 **with particular specialized equipment;**

13 **d. An analysis of the labor market conditions in Kentucky counties**
14 **in the vicinity of the legacy expansion project at the time**
15 **construction of the project is ongoing and during the time at**
16 **which operations at the project commence, which shall include**
17 **the eligible company's estimates of the availability of Kentucky**
18 **laborers of sufficient skill, training, and expertise to perform the**
19 **work the company requires, during both the construction and**
20 **operational phases of the project; and**

21 **e. An analysis of any other factor the authority and the eligible**
22 **company may agree upon.**

23 **2. The plan may include any other items the authority and the eligible**
24 **company may agree upon.**

25 **3. a. The plan may include an expression of hiring targets and**
26 **preferences for Kentucky residents in a format and with the**
27 **detail that the authority and eligible company may agree upon.**

1 **b. The benchmark hiring target for the construction phase shall be**
2 **to hire one hundred percent (100%) of contractors from**
3 **contractors with facilities in Kentucky, and the benchmark**
4 **hiring target for the operations phase shall be the employment of**
5 **workers, of whom at least seventy-five percent (75%) are**
6 **Kentucky residents.**

7 **c. Notwithstanding the benchmark targets established by**
8 **subdivision b. of this subparagraph, the authority and eligible**
9 **company may agree upon specific hiring targets after**
10 **consideration of the analyses required by subparagraph 1. of this**
11 **paragraph.**

12 **d. The plan may set forth preferences for use of materials**
13 **manufactured in Kentucky, so long as they are competitively**
14 **priced.**

15 **e. In no event shall hiring benchmarks, hiring targets, or any**
16 **preferences take precedence over the results of a competitive**
17 **bidding process.**

18 **(b) The authority shall not approve the application required by subsection (5) of**
19 **this section until the eligible company has submitted the plan required by**
20 **this subsection, and the plan has been evaluated and approved by the**
21 **authority.**

22 **(c) An approved company shall report annually to the authority concerning its**
23 **compliance with the terms of its plan.**

24 **(d) The authority shall review the annual reports filed by an approved company**
25 **in relation to an approved company's approved plan to determine**
26 **compliance with the plan. If the authority determines that the approved**
27 **company has substantially failed to comply with the terms of its plan, the**

1 authority may take reasonably necessary measures to ensure compliance
2 with the plan, including but not limited to the withholding of the incentives
3 authorized by this section. If the authority has determined that the approved
4 company has substantially failed to comply with the terms of its plan, it
5 shall provide the eligible company with written notice of this determination,
6 and the eligible company shall be provided a reasonable opportunity to cure
7 any deficiencies prior to the withholding of any incentives.

8 (7) (a) The initial term of an agreement entered into under this section shall be ten
9 (10) years. During each year of the agreement term, the approved company
10 shall be eligible to recover one-tenth (1/10) of the total incentives approved
11 by the authority.

12 (b) If, at the end of the original ten (10) year term of the legacy expansion
13 project agreement, the approved company has not claimed all of the
14 approved incentives available under the legacy expansion project
15 agreement, the authority shall extend the term of the agreement by one (1)
16 year for each year during the original ten (10) year term of the agreement
17 that the approved company met or exceeded the requirements established by
18 subsection (3)(c) of this section. The term of the legacy expansion project
19 agreement, including all extensions, shall not exceed twenty (20) years, and
20 the amount of recovery during each year that the agreement is extended
21 shall be determined on a pro rata basis, based upon the total number of
22 years for which the agreement is extended.

23 (8) The Kentucky General Assembly recognizes that the benefits accruing to the
24 Commonwealth from a legacy expansion project include benefits beyond those
25 that would typically be considered in making the determination required by KRS
26 148.855(4)(c). Therefore, the analysis of positive fiscal impact required by KRS
27 148.855(4)(c) and (5) shall include an accounting of the following social benefits:

1 (a) The positive impact that the legacy expansion project will have on the
2 existing tourism attraction project;

3 (b) The positive impact the legacy expansion project will have on other tourism
4 attractions that will receive increased visitation due to the existence of the
5 legacy expansion project; and

6 (c) The positive impacts that will accrue to the economy of the Commonwealth
7 from the national and international exposure the legacy expansion project
8 is expected to provide.

9 ➔ Section 56. KRS 65.7043 is amended to read as follows:

10 The purposes of KRS 65.7041 to 65.7083 are as follows:

11 (1) KRS 65.7047 provides authority for cities and counties to establish local
12 development areas for the development of previously undeveloped land within their
13 jurisdictional boundaries and to devote local resources to support the development
14 of projects in those local development areas. Local development areas established
15 under KRS 65.7047 and projects within local development areas shall not be
16 eligible for participation by the Commonwealth; and

17 (2) (a) KRS 65.7049, 65.7051, and 65.7053 provide a framework for cities and
18 counties;

19 1. To establish development areas for:

20 a. The redevelopment of previously developed land within their
21 jurisdictional boundaries; and

22 b. The development of previously undeveloped land, if the project
23 proposed for the development area includes an arena as part of
24 the proposed development; and

25 2. ~~[, and]~~ To devote local resources to providing redevelopment assistance
26 and supporting projects in those development areas.

1 **(b)** Projects within development areas established pursuant to KRS 65.7049,
2 65.7051, and 65.7053 shall be eligible for participation by the Commonwealth
3 if such projects meet the requirements for Commonwealth participation
4 established by Subchapter 30 of KRS Chapter 154.

5 ➔Section 57. KRS 65.7045 is amended to read as follows:

6 As used in KRS 65.7041 to 65.7083:

- 7 (1) "Activation date" means the date established any time within a two (2) year period
8 after the commencement date. The activation date is the date on which the time
9 period for the pledge of incremental revenues shall commence. The governing body
10 may extend the two (2) year period to no more than four (4) years upon written
11 application by the agency requesting the extension. To implement the activation
12 date, the agency that is a party to the local participation agreement or the local
13 development area agreement shall notify the governing body that created the
14 development area or local development area;
- 15 (2) "Agency" means:
- 16 (a) An urban renewal and community development agency established under
17 KRS Chapter 99;
- 18 (b) A development authority established under KRS Chapter 99;
- 19 (c) A nonprofit corporation;
- 20 (d) A housing authority established under KRS Chapter 80;
- 21 (e) An air board established under KRS 183.132 to 183.160;
- 22 (f) A local industrial development authority established under KRS 154.50-301
23 to 154.50-346;
- 24 (g) A riverport authority established under KRS 65.510 to 65.650; or
- 25 (h) A designated department, division, or office of a city or county;

- 1 (3) *"Arena" means a facility which serves primarily as a venue for athletic events,*
2 *live entertainment, and other performances, and which has a permanent seating*
3 *capacity of at least five thousand (5,000);*
- 4 (4) "Authority" means the Kentucky Economic Development Finance Authority
5 established by KRS 154.20-010;
- 6 ~~(5)~~~~(4)~~ "Brownfield site" means real property, the expansion, redevelopment, or reuse
7 of which may be complicated by the presence or potential presence of a hazardous
8 substance, pollutant, or contaminant;
- 9 ~~(6)~~~~(5)~~ "Capital investment" means:
- 10 (a) Obligations incurred for labor and to contractors, subcontractors, builders, and
11 materialmen in connection with the acquisition, construction, installation,
12 equipping, and rehabilitation of a project;
- 13 (b) The cost of acquiring land or rights in land within the development area on the
14 footprint of the project, and any cost incident thereto, including recording
15 fees;
- 16 (c) The cost of contract bonds and of insurance of all kinds that may be required
17 or necessary during the course of acquisition, construction, installation,
18 equipping, and rehabilitation of a project which is not paid by the contractor
19 or contractors or otherwise provided;
- 20 (d) All costs of architectural and engineering services, including test borings,
21 surveys, estimates, plans, specifications, preliminary investigations,
22 supervision of construction, and the performance of all the duties required by
23 or consequent upon the acquisition, construction, installation, equipping, and
24 rehabilitation of a project;
- 25 (e) All costs that are required to be paid under the terms of any contract for the
26 acquisition, construction, installation, equipping, and rehabilitation of a
27 project; and

1 (f) All other costs of a nature comparable to those described in this subsection;

2 ~~(7)~~~~(6)~~ "City" means any city, consolidated local government, or urban-county

3 government;

4 ~~(8)~~~~(7)~~ "Commencement date" means:

5 (a) The date on which a local development area agreement is executed; or

6 (b) The date on which a local participation agreement is executed;

7 ~~(9)~~~~(8)~~ "Commonwealth" means the Commonwealth of Kentucky;

8 ~~(10)~~~~(9)~~ "County" means any county, consolidated local government, charter county,

9 unified local government, or urban-county government;

10 ~~(11)~~~~(10)~~ "Debt charges" means the principal, including any mandatory sinking fund

11 deposits, interest, and any redemption premium, payable on increment bonds as the

12 payments come due and are payable and any charges related to the payment of the

13 foregoing;

14 ~~(12)~~~~(11)~~ "Development area" means an area established under KRS 65.7049, 65.7051,

15 and 65.7053;

16 ~~(13)~~~~(12)~~ "Economic development projects" means projects which are approved for tax

17 credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter

18 154;

19 ~~(14)~~~~(13)~~ "Establishment date" means the date on which a development area or a local

20 development area is created. If the development area, local development area,

21 development area plan, or local development area plan is modified or amended

22 subsequent to the original establishment date, the modifications or amendments

23 shall not extend the existence of the development area or local development area

24 beyond what would be permitted under KRS 65.7041 to 65.7083 from the original

25 establishment date;

26 ~~(15)~~~~(14)~~ "Governing body" means the body possessing legislative authority in a city or

27 county;

1 ~~(16)~~~~[(15)]~~ "Increment bonds" means bonds and notes issued for the purpose of paying
2 the costs of one (1) or more projects, or grant or loan programs as described in
3 subsection ~~(29)~~~~[(28)]~~(c) of this section, in a development area or a local
4 development area;

5 ~~(17)~~~~[(16)]~~ "Incremental revenues" means the amount of revenues received by a taxing
6 district, as determined by subtracting old revenues from new revenues in a calendar
7 year with respect to a development area, a project within a development area, or a
8 local development area;

9 ~~(18)~~~~[(17)]~~ "Issuer" means a city, county, or agency issuing increment bonds;

10 ~~(19)~~~~[(18)]~~ "Local development area" means a development area established under KRS
11 65.7047;

12 ~~(20)~~~~[(19)]~~ "Local development area agreement" means an agreement entered into under
13 KRS 65.7047;

14 ~~(21)~~~~[(20)]~~ "Local participation agreement" means the agreement entered into under KRS
15 65.7063;

16 ~~(22)~~~~[(21)]~~ "Local tax revenues" means:

17 (a) Revenues derived by a city or county from one (1) or more of the following
18 sources:

19 1. Real property ad valorem taxes;

20 2. Occupational license taxes, excluding occupational license taxes that
21 have already been pledged to support an economic development project
22 within the development area; and

23 3. The occupational license fee permitted by KRS 65.7056; and

24 (b) Revenues derived by any taxing district other than school districts or fire
25 districts from real property ad valorem taxes;

26 ~~(23)~~~~[(22)]~~ "Low-income household" means a household in which gross income is no
27 more than two hundred percent (200%) of the poverty guidelines updated

1 periodically in the Federal Register by the United States Department of Health and
2 Human Services under the authority of 42 U.S.C. sec. 9902(2);

3 (24)~~[(23)]~~ "New revenues" means the amount of local tax revenues received by a taxing
4 district with respect to a development area or a local development area in any
5 calendar year beginning with the year in which the activation date occurred;

6 (25)~~[(24)]~~ "Old revenues" means the amount of local tax revenues received by a taxing
7 district with respect to a development area or a local development area during the
8 last calendar year prior to the commencement date. If the governing body
9 determines that the amount of local tax revenues received during the last calendar
10 year prior to the commencement date does not represent a true and accurate
11 depiction of revenues, the governing body may consider revenues for a period of no
12 longer than three (3) calendar years prior to the commencement date, so as to
13 determine a fair representation of local tax revenues.

14 (26)~~[(25)]~~ "Outstanding" means increment bonds that have been issued, delivered, and
15 paid for by the purchaser, except any of the following:

16 (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon
17 payment or redemption;

18 (b) Increment bonds in replacement of which or in exchange for which other
19 increment bonds have been issued; or

20 (c) Increment bonds for the payment, redemption, or purchase for cancellation
21 prior to maturity, of which sufficient moneys or investments, in accordance
22 with the ordinance or other proceedings or any applicable law, by mandatory
23 sinking fund redemption requirements, or otherwise, have been deposited, and
24 credited in a sinking fund or with a trustee or paying or escrow agent, whether
25 at or prior to their maturity or redemption, and, in the case of increment bonds
26 to be redeemed prior to their stated maturity, notice of redemption has been
27 given or satisfactory arrangements have been made for giving notice of that

1 redemption, or waiver of that notice by or on behalf of the affected bond
2 holders has been filed with the issuer or its agent;

3 ~~(27)~~~~[(26)]~~ "Planning unit" means a planning commission established pursuant to KRS
4 Chapter 100;

5 ~~(28)~~~~[(27)]~~ "Project" means any property, asset, or improvement located in a development
6 area or a local development area and certified by the governing body as:

- 7 (a) Being for a public purpose; and
8 (b) Being for the development of facilities for residential, commercial, industrial,
9 public, recreational, or other uses, or for open space, including the
10 development, rehabilitation, renovation, installation, improvement,
11 enlargement, or extension of real estate and buildings; and
12 (c) Contributing to economic development or tourism;

13 ~~(29)~~~~[(28)]~~ "Redevelopment assistance," as utilized within a development area, includes
14 the following:

- 15 (a) Technical assistance programs to provide information and guidance to
16 existing, new, and potential businesses and residences;
17 (b) Programs to market and promote the development area and attract new
18 businesses and residents;
19 (c) Grant and loan programs to encourage the construction or rehabilitation of
20 residential, commercial, and industrial buildings; improve the appearance of
21 building facades and signage; and stimulate business start-ups and expansions;
22 (d) Programs to obtain a reduced interest rate, down payment, or other improved
23 terms for loans made by private, for-profit, or nonprofit lenders to encourage
24 the construction or rehabilitation of residential, commercial, and industrial
25 buildings; improve the appearance of building facades and signage; and
26 stimulate business start-ups and expansions;

- 1 (e) Local capital improvements, including but not limited to the installation,
2 construction, or reconstruction of streets, lighting, pedestrian amenities, public
3 utilities, public transportation facilities, public parking, parks, playgrounds,
4 recreational facilities, and public buildings and facilities;
- 5 (f) Improved or increased provision of public services, including but not limited
6 to police or security patrols, solid waste management, and street cleaning;
- 7 (g) Provision of technical, financial, or other assistance in connection with:
- 8 1. Applications to the Environmental and Public Protection Cabinet for a
9 brownfields assessment or a No Further Remediation Letter issued
10 pursuant to KRS 224.01-450; or
- 11 2. Site remediation by means of the Voluntary Environmental Remediation
12 Program to remove environmental contamination in the development
13 area, or lots or parcels within it, pursuant to KRS 224.01-510 to 224.01-
14 532; and
- 15 (h) Direct development by a city, county, or agency of real property acquired by
16 the city, county, or agency. Direct development may include one (1) or more
17 of the following:
- 18 1. Assembly and replatting of lots or parcels;
- 19 2. Rehabilitation of existing structures and improvements;
- 20 3. Demolition of structures and improvements and construction of new
21 structures and improvements;
- 22 4. Programs of temporary or permanent relocation assistance for businesses
23 and residents;
- 24 5. The sale, lease, donation, or other permanent or temporary transfer of
25 real property to public agencies, persons, and entities both for profit and
26 nonprofit; and
- 27 6. The acquisition and construction of projects;

1 ~~(30)~~~~(29)~~ "Service payment agreement" means an agreement between a city, county, or
2 issuer of increment bonds or other obligations and any person, whereby the person
3 agrees to guarantee the receipt of incremental revenues, or the payment of debt
4 charges, or any portion thereof, on increment bonds or other obligations issued by
5 the city, county, or issuer;

6 ~~(31)~~~~(30)~~ "Special fund" means a special fund created under KRS 65.7061 in which all
7 incremental revenues shall be deposited;

8 ~~(32)~~~~(31)~~ "Taxing district" means any city, county, or special taxing district other than
9 school districts and fire districts;

10 ~~(33)~~~~(32)~~ "Tax incentive agreement" means an agreement entered into under KRS
11 154.30-070; and

12 ~~(34)~~~~(33)~~ "Termination date" means:

13 (a) For a development area, a date established by the ordinance creating the
14 development area that is no more than twenty (20) years from the
15 establishment date. If a tax incentive agreement for a project within a
16 development area or a local participation agreement relating to the
17 development area has a termination date that is later than the termination date
18 established in the ordinance, the termination date for the development area
19 shall be extended to the termination date of the tax incentive agreement, or
20 local participation agreement. However, the termination date for the
21 development area shall in no event be more than forty (40) years from the
22 establishment date;

23 (b) For a local development area, a date established by the ordinance creating the
24 local development area that is no more than twenty (20) years from the
25 establishment date, provided that if a local development area agreement
26 relating to the local development area has a termination date that is later than
27 the termination date established in the ordinance, the termination date for the

1 local development area shall be extended to the termination date of the local
2 development area agreement;

3 (c) For a local participation agreement, a date that is no more than twenty (20)
4 years from the activation date. However, the termination date for a local
5 participation agreement shall in no event be more than forty (40) years from
6 the establishment date of the development area to which the local participation
7 agreement relates; and

8 (d) For a local development area agreement, a date that is no more than twenty
9 (20) years from the activation date. However, the termination date for a local
10 development area agreement shall in no event be more than forty (40) years from the
11 establishment date of the local development area to which the development area
12 agreement relates.

13 development area agreement relates.

14 ➔Section 58. KRS 65.7049 is amended to read as follows:

15 Any city or county may establish a development area pursuant to KRS 65.7049, 65.7051,
16 and 65.7053 to encourage investment and reinvestment in and development, use, and
17 reuse of areas of the city or county under the following conditions:

18 (1) The area shall be contiguous and shall be no more than three (3) square miles;

19 (2) The establishment or expansion of the development area shall not cause the
20 assessed value of taxable real property within all development areas and local
21 development areas of the city or county establishing the development area to exceed
22 twenty percent (20%) of the assessed value of all taxable real property within its
23 jurisdiction. For the purpose of determining whether the twenty percent (20%)
24 threshold has been met, the assessed value of taxable real property within all of the
25 development areas and local development areas shall be valued as of the
26 establishment date;

- 1 (3) The governing body of the city or county shall determine that the development area
2 has two (2) or more of the following conditions:
- 3 (a) Substantial loss of residential, commercial, or industrial activity or use;
 - 4 (b) Forty percent (40%) or more of the households are low-income households;
 - 5 (c) More than fifty percent (50%) of residential, commercial, or industrial
6 structures are deteriorating or deteriorated;
 - 7 (d) Substantial abandonment of residential, commercial, or industrial structures;
 - 8 (e) Substantial presence of environmentally contaminated land;
 - 9 (f) Inadequate public improvements or substantial deterioration in public
10 infrastructure; or
 - 11 (g) Any combination of factors that substantially impairs or arrests the growth and
12 economic development of the city or county; impedes the provision of
13 adequate housing; impedes the development of commercial or industrial
14 property; or adversely affects public health, safety, or general welfare due to
15 the development area's present condition and use; and
- 16 (4) The governing body of the city or county shall find that all of the following are true:
- 17 (a) That the development area is not reasonably expected to be developed without
18 public assistance. This finding shall be supported by specific reasons and
19 supporting facts, including a clear demonstration of the financial need for
20 public assistance; and
 - 21 (b) That the public benefits of the development area justify the public costs
22 proposed. This finding shall be supported by specific data and figures
23 demonstrating that the projected benefits outweigh the anticipated costs and
24 shall take into account the positive and negative effects of investment in the
25 development on existing businesses and residents within the community as a
26 whole; and

1 (c) 1. That the area immediately surrounding the development area has not
2 been subject to growth and development through investment by private
3 enterprise; or

4 2. If the area immediately surrounding the development area has been subject to
5 growth and development through investment by private enterprise, the identification of
6 special circumstances within the development area that would prevent its development
7 without public assistance.

8 ➔Section 59. KRS 65.7053 is amended to read as follows:

9 (1) An ordinance establishing a development area shall include the following
10 provisions:

11 (a) A legal description of the boundaries of the development area, and geographic
12 reference points;

13 (b) The establishment date;

14 (c) The termination date, including a provision that allows the termination date to
15 be extended as provided in KRS 65.7045~~(34)~~~~[(33)]~~;

16 (d) A name for the development area for identification purposes;

17 (e) A finding that the conditions in the development area meet the criteria
18 described in KRS 65.7049;

19 (f) A finding supporting the need to employ redevelopment assistance in the
20 development area;

21 (g) A provision adopting the development plan required by KRS 65.7051(1);

22 (h) Approval of any agreements relating to the development area, including any
23 local participation agreements;

24 (i) A provision establishing a special fund for the development area or any
25 project within the development area;

26 (j) A requirement that any entity other than the governing body that receives
27 financial assistance under the development area ordinance, whether in the

1 form of a grant, loan, or loan guarantee, shall make periodic accounting to the
2 governing body;

3 (k) A provision for periodic analysis and review by the governing body of the
4 development activity in the development area, a review of the progress in
5 meeting the stated goals of the development area, and a requirement that the
6 review and analysis be forwarded to the authority if the development activity
7 includes projects subject to a tax incentive agreement;

8 (l) Designation of the agency or agencies responsible for oversight,
9 administration, and implementation of the development ordinance; and

10 (m) Any other provisions, findings, limitations, rules, or procedures regarding the
11 proposed development area or a project within the development area and its
12 establishment or maintenance deemed necessary by the city or county.

13 (2) An ordinance establishing a development area may designate an existing agency to
14 oversee and administer implementation of a development area ordinance or a
15 portion thereof.

16 (3) Unless the ordinance establishing a development area requires an earlier date,
17 a development area shall cease to exist on the termination date.

18 ➔Section 60. KRS 65.680 is amended to read as follows:

19 As used in KRS 65.680 to 65.699:

20 (1) "Activation date" means the date established in the grant contract at any time in a
21 two (2) year period after the date of approval of the grant contract by the economic
22 development authority or the tourism development authority, as appropriate. The
23 economic development authority or tourism development authority, as appropriate,
24 may extend this two (2) year period to no more than four (4) years upon written
25 application of the agency requesting the extension. To implement the activation
26 date, the agency who is a party to the grant contract shall notify the economic
27 development authority or the tourism development authority, as appropriate, the

- 1 Department of Revenue, and other taxing districts that are parties to the grant
2 contract when the implementation of the increment authorized in the grant contract
3 shall occur;
- 4 (2) "Agency" means an urban renewal and community development agency established
5 under KRS Chapter 99; a development authority established under KRS Chapter 99;
6 a nonprofit corporation established under KRS Chapter 58; an air board established
7 under KRS 183.132 to 183.160; a local industrial development authority established
8 under KRS 154.50-301 to 154.50-346; a riverport authority established under KRS
9 65.510 to 65.650; or a designated department, division, or office of a city or county;
- 10 (3) "Assessment" means the job development assessment fee authorized by KRS
11 65.6851, which the governing body may elect to impose throughout the
12 development area;
- 13 (4) "Brownfield site" means real property, the expansion, redevelopment, or reuse of
14 which may be complicated by the presence or potential presence of a hazardous
15 substance, pollutant, or contaminant;
- 16 (5) "City" means any city, consolidated local government, or urban-county;
- 17 (6) "Commencement date" means the date a development area is established, as
18 provided in the ordinance creating the development area;
- 19 (7) "Commonwealth" means the Commonwealth of Kentucky;
- 20 (8) "County" means any county, consolidated local government, or charter county;
- 21 (9) "CPI" means the nonseasonally adjusted Consumer Price Index for all urban
22 consumers, all items (base year computed for 1982 to 1984 equals one hundred
23 (100)), published by the United States Department of Labor, Bureau of Labor
24 Statistics;
- 25 (10) "Debt charges" means the principal, including any mandatory sinking fund deposits,
26 interest, and any redemption premium, payable on increment bonds as the payments
27 come due and are payable and any charges related to the payment of the foregoing;

- 1 (11) "Development area" means a contiguous geographic area, which may be within one
2 (1) or more cities or counties, defined and created for economic development
3 purposes by an ordinance of a city or county in which one (1) or more projects are
4 proposed to be located, except that for any development area for which increments
5 are to include revenues from the Commonwealth, the contiguous geographic area
6 shall satisfy the requirements of KRS 65.6971 or 65.6972;
- 7 (12) "Economic development authority" means the Kentucky Economic Development
8 Finance Authority as created in KRS 154.20-010;
- 9 (13) "Enterprise Zone" means an area that had been designated by the Enterprise Zone
10 Authority of Kentucky to be eligible for the benefits of Subchapter 45 of KRS
11 Chapter 154 before January 1, 2005;
- 12 (14) "Governing body" means the body possessing legislative authority in a city or
13 county;
- 14 (15) "Grant contract" means:
- 15 (a) That agreement with respect to a development area established under KRS
16 65.686, by and among an agency and one (1) or more taxing districts other
17 than the Commonwealth, by which a taxing district permits the payment to an
18 agency of an amount equal to a portion of increments other than revenues
19 from the Commonwealth received by it in return for the benefits accruing to
20 the taxing district by reason of one (1) or more projects in a development area;
21 or
- 22 (b) That agreement, including with respect to a development area satisfying the
23 requirements of KRS 65.6971 or 65.6972, a master agreement and addenda to
24 the master agreement, by and among an agency, one (1) or more taxing
25 districts, and the economic development authority or the tourism development
26 authority, as appropriate, by which a taxing district permits the payment to an
27 agency of an amount equal to a portion of increments received by it in return

1 for the benefits accruing to the taxing district by reason of one (1) or more
2 projects in a development area;

3 (16) "Increment bonds" means bonds and notes issued for the purpose of paying the costs
4 of one (1) or more projects in a development area, the payment of which is secured
5 solely by a pledge of increments or by a pledge of increments and other sources of
6 payment that are otherwise permitted by law to be pledged or used as a source of
7 payment of the bonds or notes;

8 (17) "Increments" means the amount of revenues received by any taxing district,
9 determined by subtracting the amount of old revenues from the amount of new
10 revenues in the calendar year with respect to a development area and for which the
11 taxing district or districts and the agency have agreed upon under the terms of a
12 grant contract;

13 (18) "Infrastructure development" means the acquisition of real estate within a
14 development area meeting the requirements of KRS 65.6971 and the construction or
15 improvement, within a development area meeting the requirements of KRS
16 65.6971, of roads and facilities necessary or desirable for improvements of the real
17 estate, including surveys; site tests and inspections; environmental remediation;
18 subsurface site work; excavation; removal of structures, roadways, cemeteries, and
19 other underground and surface obstructions; filling, grading, and provision of
20 drainage, storm water retention, installation of utilities such as water, sewer, sewage
21 treatment, gas, and electricity, communications, and similar facilities; and utility
22 extensions to the boundaries of the development area meeting the requirements of
23 KRS 65.6971;

24 (19) "Issuer" means a city, county, or an agency issuing increment bonds;

25 (20) "New revenues" means the amount of revenues received with respect to a
26 development area in any calendar year after the activation date for a development
27 area:

- 1 (a) Established under KRS 65.686, the ad valorem taxes other than the school and
2 fire district portions of the ad valorem taxes received from real property
3 generated from the development area and properties sold within the
4 development area, and occupational license fees not otherwise used as a credit
5 against an assessment, and all or a portion of assessments as determined by
6 the governing body; or
- 7 (b) Satisfying the requirements of KRS 65.6971, the ad valorem taxes other than
8 the school and fire district portions of the ad valorem taxes received from real
9 property generated from the development area and properties sold within the
10 development area; or
- 11 (c) Satisfying the requirements of KRS 65.6972, the ad valorem taxes, other than
12 the school and fire district portions of the ad valorem taxes, received from real
13 property, Kentucky individual income tax, Kentucky sales and use taxes, local
14 insurance premium taxes, occupational license fees, or other such state taxes
15 as may be determined by the Department of Revenue to be applicable to the
16 project and specified in the grant contract, generated from the primary project
17 entity within the development area minus relocation revenue;
- 18 (21) "Old revenues" means the amount of revenues received with respect to a
19 development area:
- 20 (a) Established under KRS 65.686, in the last calendar year prior to the
21 commencement date for the development area, revenues which constitute ad
22 valorem taxes other than the school and fire district portions of ad valorem
23 taxes received from real property in the development area and occupational
24 license fees generated from the development area; or
- 25 (b) Satisfying the requirements of KRS 65.6971, in the last calendar year prior to
26 the commencement date for the development area, revenues which constitute

1 ad valorem taxes other than the school and fire district portions of ad valorem
2 taxes received from real property in the development area; or

3 (c) Satisfying the requirements of KRS 65.6972, in the period of no longer than
4 three (3) calendar years prior to the commencement date, the average as
5 determined by the Department of Revenue to be a fair representation of
6 revenues derived from ad valorem taxes, other than the school and fire district
7 portions of ad valorem taxes, from real property in the development area, and
8 Kentucky individual income tax, Kentucky sales and use taxes, local
9 insurance premium taxes, occupational license fees, and other such state taxes
10 as may be determined by the Department of Revenue as specified in the grant
11 contract generated from the development area. With respect to this paragraph,
12 if the development area was within an active enterprise zone for the period
13 used by the Department of Revenue for measuring old revenues, then the
14 calculation of old revenues shall include the amounts of ad valorem taxes,
15 other than the school and fire district portions of ad valorem taxes, that would
16 have been generated from real property, Kentucky individual income tax,
17 Kentucky sales and use taxes, local insurance premium taxes, occupational
18 license fees, and other such state taxes as may be determined by the
19 Department of Revenue as specified in the grant contract, were the
20 development area not within an active enterprise zone. With respect to this
21 paragraph, if the primary project entity generated old revenue prior to the
22 commencement date in the development area or revenues were derived from
23 the development area prior to the commencement date of the development
24 area, then revenues shall increase each calendar year by the percentage
25 increase of the consumer price index, if any;

26 (22) "Outstanding" means increment bonds that have been issued, delivered, and paid
27 for, except any of the following:

- 1 (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon
2 payment or redemption;
- 3 (b) Increment bonds in replacement of which or in exchange for which other
4 bonds have been issued; or
- 5 (c) Increment bonds for the payment, or redemption or purchase for cancellation
6 prior to maturity, of which sufficient moneys or investments, in accordance
7 with the ordinance or other proceedings or any applicable law, by mandatory
8 sinking fund redemption requirements, or otherwise, have been deposited, and
9 credited in a sinking fund or with a trustee or paying or escrow agent, whether
10 at or prior to their maturity or redemption, and, in the case of increment bonds
11 to be redeemed prior to their stated maturity, notice of redemption has been
12 given or satisfactory arrangements have been made for giving notice of that
13 redemption, or waiver of that notice by or on behalf of the affected bond
14 holders has been filed with the issuer or its agent;
- 15 (23) "Primary project entity" means the entity responsible for control, ownership, and
16 operation of the project within a development area satisfying the requirements of
17 KRS 65.6972 which generates the greatest amount of new revenues or, in the case
18 of a proposed development area satisfying the requirements of KRS 65.6972, is
19 expected to generate the greatest amount of new revenues;
- 20 (24) "Project" means, for purposes of a development area:
- 21 (a) Established under KRS 65.686, any property, asset, or improvement certified
22 by the governing body, which certification is conclusive as:
- 23 1. Being for a public purpose;
- 24 2. Being for the development of facilities for residential, commercial,
25 industrial, public, recreational, or other uses, or for open space, or any
26 combination thereof, which is determined by the governing body

- 1 establishing the development areas as contributing to economic
2 development;
- 3 3. Being in or related to a development area; and
- 4 4. Having an estimated life or period of usefulness of one (1) year or more,
5 including but not limited to real estate, buildings, personal property,
6 equipment, furnishings, and site improvements and reconstruction,
7 rehabilitation, renovation, installation, improvement, enlargement, and
8 extension of property, assets, or improvements so certified as having an
9 estimated life or period of usefulness of one (1) year or more;
- 10 (b) Satisfying the requirements of KRS 65.6971; an economic development
11 project defined under KRS 154.22-010, 154.24-010, or 154.28-010; or a
12 tourism attraction project defined under KRS 148.851; or
- 13 (c) Satisfying the requirements of KRS 65.6972, the development of facilities for:
- 14 1. The transportation of goods or persons by air, ground, water, or rail;
- 15 2. The transmission or utilization of information through fiber-optic cable
16 or other advanced means;
- 17 3. Commercial, industrial, recreational, tourism attraction, or educational
18 uses; or
- 19 4. Any combination thereof;
- 20 (25) "Relocation revenue" means the ad valorem taxes, other than the school and fire
21 district portions of ad valorem taxes, from real property, Kentucky individual
22 income tax, Kentucky sales and use taxes, local insurance premium taxes,
23 occupational license fees, and other such state taxes as specified in the grant
24 contract, received by a taxing district attributable to that portion of the existing
25 operations of the primary project entity located in the Commonwealth and
26 relocating to the development area satisfying the requirements of KRS 65.6972;

- 1 (26) "Special fund" means a special fund created in accordance with KRS 65.688 into
2 which increments are to be deposited;
- 3 (27) "Taxing district" means a city, county, or other taxing district that encompasses all
4 or part of a development area, or the Commonwealth, but does not mean a school
5 district or fire district;
- 6 (28) "Termination date" means the date on which a development area shall cease to
7 exist, which for purposes of a development area:
- 8 (a) Established under KRS 65.686, shall be:
- 9 1. For a period of no longer than twenty (20) years from the
10 commencement date and set forth in the grant contract; or
- 11 2. For a period as determined under Section 61 of this Act.
- 12 Increment bonds shall not mature on a date beyond the termination date
13 established by this paragraph; or
- 14 (b) Satisfying the requirements of KRS 65.6971, shall be for a period of no longer
15 than twenty (20) years from the commencement date and set forth in the grant
16 contract constituting a master agreement, except that for an addendum added
17 to the master agreement for each project in the development area, the
18 termination date may be extended to no longer than twenty (20) years from the
19 date of each addendum; or
- 20 (c) Satisfying the requirements of KRS 65.6972, shall be for a period of no longer
21 than twenty (20) years from the activation date of the grant contract.
22 Increment bonds shall not mature on a date beyond the termination date
23 established by this subsection;
- 24 (29) "Tourism development authority" means the Tourism Development Finance
25 Authority as created in KRS 148.850; and
- 26 (30) "Project costs" mean the total private and public capital costs of a project.

1 ➔ SECTION 61. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED
2 TO READ AS FOLLOWS:

3 (1) The termination date for a development area may be extended beyond twenty (20)
4 years as provided in this section. To qualify for an extension of the termination
5 date, the development area shall meet the following conditions:

6 (a) The initial development area shall have been established by the county
7 under KRS 65.686 prior to July 1, 2003, and all subsequent development
8 areas contiguous to the initial development area shall have been established
9 prior to August 1, 2006;

10 (b) The development area, consisting of one (1) or more contiguous
11 development areas, includes at least four hundred (400) acres in the
12 aggregate; and

13 (c) The agency that issued the increment bonds for the development areas
14 described in paragraphs (a) and (b) of this subsection shall, within two (2)
15 years of the effective date of this Act, refund the outstanding increment
16 bonds with the issuance of new increment bonds for a term not to exceed
17 twenty (20) years.

18 (2) The termination date for development areas meeting the requirements of
19 subsection (1) of this section shall be the term of the new increment bonds issued
20 in accordance with subsection (1)(c) of this section, not to exceed twenty (20)
21 years from the date the new increment bonds described in subsection (1)(c) of this
22 section are issued.

23 ➔ Section 62. KRS 138.510 is amended to read as follows:

24 (1) (a) Except as provided in paragraphs (b) and (e) of this subsection [for the
25 ~~conduct of harness racing at a county fair~~], an excise tax is imposed on all
26 tracks conducting pari-mutuel racing under the jurisdiction of the Kentucky
27 Horse Racing Authority.

1 1. For each track with a daily average handle of one million two hundred
2 thousand dollars (\$1,200,000) or above, the tax shall be in the amount of
3 three and one-half percent (3.5%) of all money wagered during the fiscal
4 year. ~~[A fiscal year as used in this subsection and subsection (3) of this~~
5 ~~section shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30.]~~

6 2. For each track with a daily average handle under one million two
7 hundred thousand dollars (\$1,200,000) the tax shall be ~~[an amount equal~~
8 ~~to]~~ one and one-half percent (1.5%) of all money wagered during the
9 fiscal year.

10 **(b)** ~~[However, effective January 1, 2006,]~~ If a ~~[host]~~ track located in this state **is**
11 **the host track for** ~~[is the location for the conduct of]~~ a **live** one (1) **or two** day
12 international horse racing event that distributes in excess of a total of
13 **fifteen** ~~[ten]~~ million dollars **(\$15,000,000)** ~~[(\$10,000,000)]~~ in purses, an excise
14 tax shall not be imposed on pari-mutuel wagering on live **races that are a part**
15 **of the one (1) or two (2) day international horse racing event** ~~[racing]~~
16 conducted that day **or those days** at the race track. ~~[This tax exemption shall~~
17 ~~remain in effect for any succeeding one (1) day international horse racing~~
18 ~~event if the event returns within three (3) years of the previously held event.]~~

19 **(c)** For the purposes of this subsection, the daily average handle shall be
20 computed from the amount wagered only at the host track on live racing and
21 shall not include money wagered:

22 1. ~~[(a)]~~ At a receiving track;

23 2. ~~[(b)]~~ At a simulcast facility;

24 3. ~~[(c)]~~ On telephone account wagering; or

25 4. ~~[(d)]~~ At a track participating as a receiving track or simulcast facility
26 displaying simulcasts and conducting interstate wagering as permitted by
27 KRS 230.3771 and 230.3773.

1 **(d)** Money shall be deducted from the tax paid by host tracks and deposited to the
2 respective development funds **as follows:**

3 **1.** ~~[in the amount of]~~ Three-quarters of one percent (0.75%) of the total live
4 racing handle for thoroughbred racing **shall be deposited in the**
5 **thoroughbred development fund established in KRS 230.400;** and

6 **2.** One percent (1%) of the total live handle for harness racing **shall be**
7 **deposited in the Kentucky standardbred, quarter horse, Appaloosa,**
8 **and Arabian development fund established in KRS 230.770.**

9 **(e) An excise tax shall not be imposed on pari-mutuel wagering on live racing**
10 **at a county fair.**

11 (2) **(a)** An excise tax is imposed on:

12 **1.[(a)]** All licensed tracks conducting telephone account wagering;

13 **2.[(b)]** All tracks participating as receiving tracks in intertrack wagering
14 under the jurisdiction of the Kentucky Horse Racing Authority; and

15 **3.[(c)]** All tracks participating as receiving tracks displaying simulcasts
16 and conducting interstate wagering thereon.

17 **(b)[(3)]** The tax ~~[imposed in subsection (2) of this section]~~ shall be ~~[in the~~
18 ~~amount of]~~ three percent (3%) of all money wagered under **paragraph (a) of**
19 **this** subsection ~~[(2) of this section]~~ during the fiscal year.

20 **(c)** A noncontiguous track facility approved by the Kentucky Horse Racing
21 Authority on or after January 1, 1999, shall be exempt from the tax imposed
22 under this subsection, if the facility is established and operated by a licensed
23 track which has a total annual handle on live racing of two hundred fifty
24 thousand dollars (\$250,000) or less. The amount of money exempted under
25 this **paragraph**~~[subsection]~~ shall be retained by the noncontiguous track
26 facility, KRS 230.3771 and 230.378 notwithstanding.

1 ~~(d)~~~~(4)~~ An amount equal to two percent (2%) of the amount wagered shall be
2 deducted from the tax imposed in **this** subsection ~~[(2) of this section]~~ and
3 deposited as follows:

4 ~~1.~~~~(a)~~ If the money is deducted from taxes imposed under
5 **paragraph(a)1. or 2. of this** subsection, **the money**~~[(2)(a) and (b) of this~~
6 ~~section, it]~~ shall be deposited in the thoroughbred development fund
7 **established in KRS 230.400** if the host track is conducting a
8 thoroughbred race meeting, or the Kentucky standardbred, quarter horse,
9 Appaloosa, and Arabian development fund **established in KRS**
10 **230.770**~~[-]~~ if the host track is conducting a harness race meeting; or

11 ~~2.~~~~(b)~~ If the money is deducted from taxes imposed under **paragraph**
12 **(a)3. of this** subsection ~~[(2)(c) of this section]~~, **the money shall be**
13 **deposited in**~~to]~~ the thoroughbred development fund **established in KRS**
14 **230.400** if interstate wagering is conducted on a thoroughbred race
15 meeting or to the Kentucky standardbred, quarter horse, Appaloosa, and
16 Arabian development fund **established in KRS 230.770**, if interstate
17 wagering is being conducted on a harness race meeting.

18 ~~(3)~~~~(5)~~ Two-tenths of one percent (0.2%) of the total amount wagered on live racing
19 in Kentucky shall be deducted from the pari-mutuel tax levied in subsection (1) of
20 this section, and one-twentieth of one percent (0.05%) of the total amount wagered
21 on intertrack wagering shall be deducted for the pari-mutuel tax levied in subsection
22 (2) of this section, and allocated to the equine industry program trust and revolving
23 fund **established in KRS 230.550** to be used for funding the equine industry
24 program at the University of Louisville.

25 **(4) (a)** ~~[(6)]~~ One-tenth of one percent (0.1%) of the total amount wagered in
26 Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1)
27 **and**~~[-]~~ (2)~~[- and (3)]~~ of this section and deposited to a trust and revolving fund

1 to be used for the construction, expansion, or renovation of facilities or the
2 purchase of equipment for equine programs at state universities.

3 **(b)** These funds shall not be used for salaries or for operating funds for teaching,
4 research, or administration. Funds allocated under this subsection shall not
5 replace other funds for capital purposes or operation of equine programs at
6 state universities.

7 **(c)** The Kentucky Council on Postsecondary Education shall serve as the
8 administrative agent and shall establish an advisory committee of interested
9 parties, including all universities with established equine programs, to
10 evaluate proposals and make recommendations for the awarding of funds.

11 **(d)** The Kentucky Council on Postsecondary Education may by administrative
12 regulation establish procedures for administering the program and criteria for
13 evaluating and awarding grants.

14 **(5) As used in this section, "fiscal year" means a time frame beginning 12:01 a.m.**
15 **July 1, and ending 12 midnight June 30.**

16 ➔Section 63. KRS 230.752 is amended to read as follows:

17 All harness racetracks licensed by the authority shall not be required to pay the
18 excise tax imposed under KRS 138.510(2) ~~and (3)~~, and the amount that would have
19 been paid under those subsections shall be retained by the track to promote and maintain
20 its facilities and its live meet.

21 ➔Section 64. Notwithstanding the \$200,000,000 minimum capital investment
22 required by KRS 154.30-050(2)(a)1.b., the Kentucky Economic Development Finance
23 Authority shall have the authority, upon application of an agency with an existing
24 agreement executed prior to January 1, 2008, to approve a reduction in the required
25 minimum capital investment to an amount of not less than \$150,000,000.

➔Section 65. 2008 Kentucky Acts Chapter 127, Part II, Capital Projects Budget;
J. Postsecondary Education; 8. University of Kentucky, at pages 562 to 570, is amended
to read as follows:

8. UNIVERSITY OF KENTUCKY

001. Expand Patient Care Facility - Hospital Phase III

Restricted Funds	-0-	250,000,000	-0-
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002. Lease-Purchase New Housing

Other Funds	-0-	75,000,000	-0-
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(1) Authorization: The above authorization is approved pursuant to KRS
45.763.

003. Construct College of Medicine - Hospital Offices

Restricted Funds	-0-	66,341,000	-0-
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004. Repair, Upgrade and Expand Central Plants I

Restricted Funds	-0-	55,000,000	-0-
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005. Lease-Purchase Data Center

Restricted Funds	-0-	40,000,000	-0-
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006. Upgrade Reynolds Building

Restricted Funds	-0-	35,000,000	-0-
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007. Acquire Land

Restricted Funds	-0-	35,000,000	-0-
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008. Construct Parking Structure #9

Other Funds	-0-	34,310,000	-0-
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(1) Authorization: The above authorization is approved pursuant to KRS
45.763.

009. Upgrade, Renovate, Improve, or Expand Research Labs

Restricted Funds	-0-	33,500,000	-0-
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010. [Construct Baseball Stadium and Clubhouse

1	Other Funds	-0-	31,900,000	-0-
2	011. Capital Renewal Maintenance Pool			
3	Restricted Funds	-0-	30,000,000	-0-
4	011. 012. Research Equipment Replacement Program			
5	Restricted Funds	-0-	30,000,000	-0-
6	012. 013. Construct Cancer Treatment Facility - Hospital			
7	Restricted Funds	-0-	27,338,000	-0-
8	013. 014. Repair, Upgrade, Improve Electrical Infrastructure			
9	Restricted Funds	-0-	25,000,000	-0-
10	014. 015. Repair, Upgrade, Improve Mechanical Infrastructure			
11	Restricted Funds	-0-	22,800,000	-0-
12	015. 016. Expand/Construct Parking Structure - Hospital			
13	Restricted Funds	-0-	20,149,000	-0-
14	016. 017. Repair, Upgrade, Improve Building Mechanical Systems			
15	Restricted Funds	-0-	20,000,000	-0-
16	017. 018. Lease-Purchase Digital Village Building 2			
17	Restricted Funds	-0-	20,000,000	-0-
18	018. 019. Repair, Upgrade, Improve Building Systems - Hospital			
19	Restricted Funds	-0-	20,000,000	-0-
20	019. 020. Expand/ Renovate Ambulatory Care Facility - Hospital			
21	Restricted Funds	-0-	20,000,000	-0-
22	020. 021. Expand/Renovate Kentucky Clinic - Hospital			
23	Restricted Funds	-0-	20,000,000	-0-
24	021. 022. Lease-Purchase Pollution Controls			
25	Restricted Funds	-0-	19,530,000	-0-
26	022. 023. Expand CRMS and Raymond Civil Engineering Building			
27	Restricted Funds	-0-	18,550,000	-0-

1	<u>023.</u>[024.] Construct Track and Field Facility			
2	Other Funds	-0-	17,666,000	-0-
3	<u>024.</u>[025.] Expand Pence Hall			
4	Restricted Funds	-0-	16,000,000	-0-
5	<u>025.</u>[026.] Construct/Purchase Good Samaritan Medical Office Building			
6	Restricted Funds	-0-	15,730,000	-0-
7	<u>026.</u>[027.] Upgrade Clinical Services - Hospital			
8	Restricted Funds	-0-	15,000,000	-0-
9	<u>027.</u>[028.] Construct/Renovate Imaging Services - Kentucky Clinic			
10	Restricted Funds	-0-	15,000,000	-0-
11	<u>028.</u>[029.] Expand and Upgrade LDDC Phase II			
12	Bond Funds	-0-	20,000,000	-0-
13	<u>029.</u>[030.] Construct Remote Cancer Clinic - Hospital			
14	Restricted Funds	-0-	12,880,000	-0-
15	<u>030.</u>[031.] Construct Medical Center Physical Plant Building			
16	Restricted Funds	-0-	12,793,000	-0-
17	<u>031.</u>[032.] Improve Life Safety Project Pool 1			
18	Restricted Funds	-0-	12,760,000	-0-
19	<u>032.</u>[033.] Purchase PACS System Pool			
20	Restricted Funds	-0-	10,585,000	-0-
21	<u>033.</u>[034.] Renovate/Upgrade Hospital Facilities			
22	Restricted Funds	-0-	10,000,000	-0-
23	<u>034.</u>[035.] Construct Equine Campus			
24	Other Funds	-0-	10,000,000	-0-
25	<u>035.</u>[036.] Lease-Purchase/ Upgrade Hospital IT Systems			
26	441Restricted Funds	-0-	10,000,000	-0-
27	<u>036.</u>[037.] Lease-Purchase ERP Phase 3			

1	Restricted Funds	-0-	10,000,000	-0-
2	<u>037.</u>[038.] Implement Land Use Plan - Hospital			
3	Restricted Funds	-0-	10,000,000	-0-
4	<u>038.</u>[039.] Sanitary Sewer Expansion/Underground Utilities Expansion and			
5	Replacement			
6	Agency Bonds	-0-	10,000,000	-0-
7	<u>039.</u>[040.] Expand Coldstream Research Campus			
8	Restricted Funds	-0-	10,000,000	-0-
9	<u>040.</u>[041.] Construct Multi-Purpose Room/Stadium Kitchen Facility			
10	Other Funds	-0-	8,000,000	-0-
11	<u>041.</u>[042.] Renovate King Library South - 1962 Section			
12	Restricted Funds	-0-	8,000,000	-0-
13	<u>042.</u>[043.] Relocate Greenhouses			
14	Restricted Funds	-0-	7,506,000	-0-
15	<u>043.</u>[044.] Lease-Purchase Wireless/Cellular Infrastructure			
16	Restricted Funds	-0-	7,000,000	-0-
17	<u>044.</u>[045.] Construct Library Depository Facility			
18	Restricted Funds	-0-	7,000,000	-0-
19	<u>045.</u>[046.] Lease-Purchase Hospital Dining Facilities and Equipment			
20	Restricted Funds	-0-	7,000,000	-0-
21	<u>046.</u>[047.] Lease-Purchase High Performance Research Computers			
22	Restricted Funds	-0-	6,500,000	-0-
23	<u>047.</u>[048.] Lease-Purchase UK/UofL/Frankfort Research Network			
24	Restricted Funds	-0-	6,000,000	-0-
25	<u>048.</u>[049.] Expand and Renovate W. Kentucky Robinson Station			
26	Restricted Funds	-0-	6,000,000	-0-
27	<u>049.</u>[050.] Design Student Center Expansion/Renovation			

1	Restricted Funds	-0-	6,000,000	-0-
2	<u>050.</u>[051.] Expand CAER Laboratories			
3	Restricted Funds	-0-	5,000,000	-0-
4	<u>051.</u>[052.] Purchase Clinical Enterprise Data Center Hardware Pool			
5	Restricted Funds	-0-	5,000,000	-0-
6	<u>052.</u>[053.] Repair, Upgrade, Improve Building Shell Systems			
7	Restricted Funds	-0-	5,000,000	-0-
8	<u>053.</u>[054.] Renovate Slone Building, Phase I			
9	Restricted Funds	-0-	5,000,000	-0-
10	<u>054.</u>[055.] Purchase Telemedicine/Virtual ICU			
11	Restricted Funds	-0-	5,000,000	-0-
12	<u>055.</u>[056.] Construct Facilities Storage Building			
13	Restricted Funds	-0-	4,806,000	-0-
14	<u>056.</u>[057.] Expand KGS Well Sample and Core Repository			
15	Restricted Funds	-0-	4,741,000	-0-
16	<u>057.</u>[058.] Purchase Digital Medical Record Expansion			
17	Restricted Funds	-0-	4,640,000	-0-
18	<u>058.</u>[059.] Purchase Patient System Enterprise			
19	Restricted Funds	-0-	4,640,000	-0-
20	<u>059.</u>[060.] Convert Taylor Education Space to Offices and Classroom			
21	Restricted Funds	-0-	4,500,000	-0-
22	<u>060.</u>[061.] Renovate Mineral Industries Building			
23	Restricted Funds	-0-	4,450,000	-0-
24	<u>061.</u>[062.] Upgrade Clinic Enterprises Network - Hospital Pool			
25	Restricted Funds	-0-	4,250,000	-0-
26	<u>062.</u>[063.] Expand Ophthalmology Clinic - Hospital			
27	Restricted Funds	-0-	4,185,000	-0-

1	<u>063.</u>[064.] Construct Facilities Support Building - Hospital			
2	Restricted Funds	-0-	4,000,000	-0-
3	<u>064.</u>[065.] Renovate Memorial Coliseum Seating Area			
4	Other Funds	-0-	4,000,000	-0-
5	<u>065.</u>[066.] Renovate Funkhouser Tower			
6	Restricted Funds	-0-	3,900,000	-0-
7	<u>066.</u>[067.] Repair, Upgrade, Improve Building Electrical Systems			
8	Restricted Funds	-0-	3,745,000	-0-
9	<u>067.</u>[068.] Upgrade Support Services - Hospital			
10	Restricted Funds	-0-	3,500,000	-0-
11	<u>068.</u>[069.] Lease-Purchase Campus Infrastructure Upgrade			
12	Restricted Funds	-0-	3,500,000	-0-
13	<u>069.</u>[070.] Renovate Old Pharmacy Building for Biology, Design			
14	Restricted Funds	-0-	3,500,000	-0-
15	<u>070.</u>[071.] Lease-Purchase Large Scale Computing			
16	Restricted Funds	-0-	3,500,000	-0-
17	<u>071.</u>[072.] Lease-Purchase Data Center Hardware - Hospital Pool			
18	Restricted Funds	-0-	3,350,000	-0-
19	<u>072.</u>[073.] Renovate Dentistry Clinic in Kentucky Clinic			
20	Restricted Funds	-0-	3,320,000	-0-
21	<u>073.</u>[074.] Renovate/Expand DLAR Quarantine Facility Spindletop			
22	Restricted Funds	-0-	3,288,000	-0-
23	<u>074.</u>[075.] Relocate and Expand Dentistry Faculty Practice			
24	Restricted Funds	-0-	3,100,000	-0-
25	<u>075.</u>[076.] Renovate Nursing Building			
26	Restricted Funds	-0-	1,988,000	-0-
27	Federal Funds	-0-	1,100,000	-0-

1	TOTAL	-0-	3,088,000	-0-
2	<u>076.</u> [077.] Construct Golf Practice Area			
3	Other Funds	-0-	3,000,000	-0-
4	<u>077.</u> [078.] Renovate Dentistry Class Lab			
5	Restricted Funds	-0-	3,000,000	-0-
6	<u>078.</u> [079.] Construct Cancer Education Facility - Hospital			
7	Restricted Funds	-0-	3,000,000	-0-
8	<u>079.</u> [080.] Renovate Reynolds Building, Phase 1			
9	Restricted Funds	-0-	3,000,000	-0-
10	<u>080.</u> [081.] Purchase Registration and Scheduling System			
11	Restricted Funds	-0-	3,000,000	-0-
12	<u>081.</u> [082.] Purchase Upgrade - HIS Computing Facility			
13	Restricted Funds	-0-	2,900,000	-0-
14	<u>082.</u> [083.] Renovate Central Computing Facility			
15	Restricted Funds	-0-	2,813,000	-0-
16	<u>083.</u> [084.] Renovate Blazer Hall Cafeteria			
17	Agency Bonds	-0-	2,800,000	-0-
18	<u>084.</u> [085.] Construct Stadium Suite Addition			
19	Other Funds	-0-	2,750,000	-0-
20	<u>085.</u> [086.] Purchase Telephone System Replacement Pool			
21	Restricted Funds	-0-	2,700,000	-0-
22	<u>086.</u> [087.] Renovate Student Center Food Court			
23	Agency Bonds	-0-	2,675,000	-0-
24	<u>087.</u> [088.] Repair, Upgrade, Improve Building Elevator Systems			
25	Restricted Funds	-0-	2,540,000	-0-
26	<u>088.</u> [089.] Convert Hunt Morgan Space to Class Lab			
27	Restricted Funds	-0-	2,500,000	-0-

1	<u>089.</u>[090.] Renovate Teaching Space in the Chemistry/Physics Building			
2	Restricted Funds	-0-	2,500,000	-0-
3	<u>090.</u>[091.] Implement Medication Bar Coding System			
4	Restricted Funds	-0-	2,500,000	-0-
5	<u>091.</u>[092.] Renovate Diagnostic Treatment Services - Hospital			
6	Restricted Funds	-0-	2,500,000	-0-
7	<u>092.</u>[093.] Lease-Purchase Data Repository System			
8	Restricted Funds	-0-	2,500,000	-0-
9	<u>093.</u>[094.] Lease-Purchase Data Center Infrastructure			
10	Restricted Funds	-0-	2,500,000	-0-
11	<u>094.</u>[095.] Repair Stadium Structure			
12	Other Funds	-0-	2,500,000	-0-
13	<u>095.</u>[096.] Renovate Parking Structure #3 - Hospital			
14	Restricted Funds	-0-	2,485,000	-0-
15	<u>096.</u>[097.] Renovate Koinonia House			
16	Restricted Funds	-0-	2,371,000	-0-
17	<u>097.</u>[098.] Upgrade Critical Care Facility - Hospital			
18	Restricted Funds	-0-	2,200,000	-0-
19	<u>098.</u>[099.] Lease-Purchase Enterprise Storage System			
20	Restricted Funds	-0-	2,200,000	-0-
21	<u>099.</u>[100.] Repair, Upgrade, Improve Civil/Site Infrastructure			
22	Restricted Funds	-0-	2,200,000	-0-
23	<u>100.</u>[101.] Renovate Vivarium in Central DLAR Facility Phase II			
24	Restricted Funds	-0-	2,176,000	-0-
25	<u>101.</u>[102.] Renovate Space in McVey Hall			
26	Restricted Funds	-0-	2,150,000	-0-
27	<u>102.</u>[103.] Construct Hall of Fame Plaza			

1	Other Funds	-0-	2,100,000	-0-
2	<u>103.</u>[104.] Replace Radiology Information System			
3	Restricted Funds	-0-	2,000,000	-0-
4	<u>104.</u>[105.] Construct Physicians Services Facilities - Hospital			
5	Restricted Funds	-0-	2,000,000	-0-
6	<u>105.</u>[106.] Renovate Soccer Press Box/Seating Addition			
7	Other Funds	-0-	2,000,000	-0-
8	<u>106.</u>[107.] Lease-Purchase Remote Site Fiber			
9	Restricted Funds	-0-	2,000,000	-0-
10	<u>107.</u>[108.] Renovate Kitchen - Hospital			
11	Restricted Funds	-0-	2,000,000	-0-
12	<u>108.</u>[109.] Upgrade Surgical Services - Hospital			
13	Restricted Funds	-0-	2,000,000	-0-
14	<u>109.</u>[110.] Purchase Dentistry Billing System Phase III			
15	Restricted Funds	-0-	2,000,000	-0-
16	<u>110.</u>[111.] Lease-Purchase Data Storage Equipment and Software Pool			
17	Restricted Funds	-0-	1,950,000	-0-
18	<u>111.</u>[112.] Lease-Purchase Data Warehouse/Infrastructure			
19	Restricted Funds	-0-	1,800,000	-0-
20	<u>112.</u>[113.] Purchase Identity Management System			
21	Restricted Funds	-0-	1,750,000	-0-
22	<u>113.</u>[114.] Lease-Purchase Campus Call Center System			
23	Restricted Funds	-0-	1,500,000	-0-
24	<u>114.</u>[115.] Lease-Purchase Network Security Hardware			
25	Restricted Funds	-0-	1,500,000	-0-
26	<u>115.</u>[116.] Purchase Radiofrequency Identification System			
27	Restricted Funds	-0-	1,500,000	-0-

1	<u>116.</u>[117.] Purchase Managed Care Enterprise			
2	Restricted Funds	-0-	1,160,000	-0-
3	<u>117.</u>[118.] Purchase Upgraded Communication Infrastructure			
4	Restricted Funds	-0-	1,014,000	-0-
5	<u>118.</u>[119.] Renovate Office Space in Funkhouser			
6	Restricted Funds	-0-	1,000,000	-0-
7	<u>119.</u>[120.] Expand Clinical Enterprise Data Center Network Pool			
8	Restricted Funds	-0-	1,000,000	-0-
9	<u>120.</u>[121.] Renovate Third Floor Little Library			
10	Restricted Funds	-0-	1,000,000	-0-
11	<u>121.</u>[122.] Purchase Upgrade Integrated Library System			
12	Restricted Funds	-0-	1,000,000	-0-
13	<u>122.</u>[123.] Renovate Teaching Space in the Funkhouser Building			
14	Restricted Funds	-0-	1,000,000	-0-
15	<u>123.</u>[124.] Lease-Purchase UPS System			
16	Restricted Funds	-0-	941,000	-0-
17	<u>124.</u>[125.] Lease-Purchase Mainframe Computer - Hospital			
18	Restricted Funds	-0-	800,000	-0-
19	<u>125.</u>[126.] Purchase Upgrade for Servers			
20	Restricted Funds	-0-	800,000	-0-
21	<u>126.</u>[127.] Handicapped Access Pool			
22	Restricted Funds	-0-	800,000	-0-
23	<u>127.</u>[128.] Purchase Staff Scheduling System - Hospital			
24	Restricted Funds	-0-	750,000	-0-
25	<u>128.</u>[129.] Purchase Document Scanning System			
26	Restricted Funds	-0-	700,000	-0-
27	<u>129.</u>[130.] Purchase Paging Software - Hospital			

1	Restricted Funds	-0-	700,000	-0-
2	<u>130.</u> [131.] Purchase Police Communications Equipment			
3	Restricted Funds	-0-	600,000	-0-
4	<u>131.</u> [132.] Purchase Shelving for Storage Facility			
5	Restricted Funds	-0-	525,000	-0-
6	<u>132.</u> [133.] Install Emergency Generator Computing Facility			
7	Restricted Funds	-0-	500,000	-0-
8	<u>133.</u> [134.] Purchase Compact Shelving - Fine Arts Library			
9	Restricted Funds	-0-	500,000	-0-
10	<u>134.</u> [135.] Purchase Digital Imaging Equipment			
11	Restricted Funds	-0-	311,000	-0-
12	<u>135.</u> [136.] Purchase Electrospray LC Tandem Mass Spectrometer			
13	Restricted Funds	-0-	290,000	-0-
14	<u>136.</u> [137.] Purchase 400 MHz NMR Spectrometer			
15	Restricted Funds	-0-	275,000	-0-
16	<u>137.</u> [138.] Purchase Precision Machining System			
17	Restricted Funds	-0-	250,000	-0-
18	<u>138.</u> [139.] Purchase Physical Chemistry Teaching Laboratory			
19	Restricted Funds	-0-	240,000	-0-
20	<u>139.</u> [140.] Purchase Circular Dichroism Spectrometer			
21	Restricted Funds	-0-	210,000	-0-
22	<u>140.</u> [141.] Upgrade Audio/Visual Equipment Guignol Theatre			
23	Restricted Funds	-0-	210,000	-0-
24	<u>141.</u> [142.] Purchase Metabolic Instructional System			
25	Restricted Funds	-0-	210,000	-0-
26	<u>142.</u> [143.] Guaranteed Energy Savings Performance Contracts			
27	<u>143.</u> [144.] Lease Med College Off-Campus Clinic - Fayette County			

1	<u>144.</u> [145.]	Lease Health Affairs Office #2 - Fayette County		
2	<u>145.</u> [146.]	Lease - E-cavern		
3	<u>146.</u> [147.]	Lease Kentucky Utilities Building - Fayette County		
4	<u>147.</u> [148.]	Lease Administrative Office - Fayette County		
5	<u>148.</u> [149.]	Lease Blazer Parkway - Fayette County		
6	<u>149.</u> [150.]	Lease Med Center Off-Campus Facility #1 - Fayette County		
7	<u>150.</u> [151.]	Lease Med Center Grant Project #2 - Fayette County		
8	<u>151.</u> [152.]	Lease Med Center Grants Projects #1 - Fayette County		
9	<u>152.</u> [153.]	Lease Health Affairs Office #4 - Fayette County		
10	<u>153.</u> [154.]	Health Affairs Office Lease #3 - Fayette County		
11	<u>154.</u> [155.]	Lease Health Affairs Office - Fayette County		
12	<u>155.</u> [156.]	Lease Good Sam - Hospital - Fayette County		
13	<u>156.</u> [157.]	Lease Grants Projects #2 - Fayette County		
14	<u>157.</u> [158.]	Lease Off Campus #3 - Fayette County		
15	<u>158.</u> [159.]	Lease Off Campus #2 - Fayette County		
16	<u>159.</u> [160.]	Lease Off Campus #1 - Fayette County		
17	<u>160.</u> [161.]	Lease Rural Health Expansion - Hazard Perry County		
18	<u>161.</u> [162.]	Lease Grants Projects #1 - Fayette County		
19	<u>162.</u> [163.]	Lease Med Center Off Campus Facility #2 - Fayette County		
20	<u>163.</u> [164.]	Construct Science Research Building #2 - Planning and Design		
21		Restricted Funds	-0-	10,000,000 -0-
22	<u>164.</u> [165.]	Construct Gatton Building Complex - Planning and Design		
23		Restricted Funds	-0-	10,000,000 -0-
24	<u>165.</u> [166.]	Lease Health Affairs Office #5 - Fayette County		
25	<u>166.</u> [167.]	Renovate 4-H Camps		
26		Bond Funds	-0-	2,000,000 -0-
27	<u>167.</u>	<i>Renovate and Upgrade Commonwealth Stadium</i>		

<u>Other Funds</u>	<u>-0-</u>	<u>180,000,000</u>	<u>-0-</u>
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(1) Financial Obligation: All costs associated with the financing of this project shall be at the offeror's risk, and the University of Kentucky and the Commonwealth of Kentucky shall not assume any subordinate or contingent financial obligation or responsibility.

(2) The above authorization is approved pursuant to KRS 45.763.

168. Construct Baseball Stadium

<i>Other Funds</i>	<i>-0-</i>	<i>37,500,000</i>	<i>-0-</i>
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(1) Financial Obligation: All costs associated with the financing of this project shall be at the offeror's risk, and the University of Kentucky and the Commonwealth of Kentucky shall not assume any subordinate or contingent financial obligation or responsibility.

(2) The above authorization is approved pursuant to KRS 45.763.

➔SECTION 66. SUBCHAPTER 60 OF KRS CHAPTER 154 IS ESTABLISHED
AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subchapter:

(1) "Average hourly wage" has the same meaning as in KRS 154.28-010;

(2) "Base employment" means:

(a) For the initial year for which credits are claimed, the number of full-time employees employed on December 31 of the base year; and

(b) For subsequent years, the greater of:

1. The number of full-time employees employed on December 31 of the base year plus each eligible position for which a credit has been claimed under Section 69 of this Act; or

2. The number of full-time employees employed on December 31 of the prior year;

1 (3) "Base year" means the later of the first full year of operation of a small business
2 or the year that begins on or after January 1, 2010, and before January 1, 2011;

3 (4) "Creates and fills" means establishes a new eligible position and hires a full-time
4 employee and replaces that employee within thirty (30) days if the employee
5 ceases for any reason to be employed by the employer;

6 (5) "Eligible position" means each position that:

7 (a) Is filled by a full-time employee and that increases the total employment of
8 the small business above its base employment; and

9 (b) Carries a base hourly wage of no less than one hundred fifty percent
10 (150%) of the federal minimum wage;

11 (6) "Full-time employee" means a person employed by a small business for at least
12 thirty-five (35) hours per week and subject to the state tax imposed by KRS
13 141.020;

14 (7) "Qualifying equipment or technology" means equipment or technology that has
15 been approved by the Division of Small Business Services; and

16 (8) "Small business" has the same meaning as in KRS 154.12-325.

17 ➔SECTION 67. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER
18 154 IS CREATED TO READ AS FOLLOWS:

19 (1) The Kentucky Economic Development Finance Authority shall develop a small
20 business development credit program in consultation with the Division of Small
21 Business Services to assist new or existing small businesses operating in the
22 Commonwealth. The nonrefundable credit shall be allowed against the taxes
23 imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall
24 be as provided in Section 30 of this Act.

25 (2) The authority shall determine the terms, conditions, and requirements for
26 application for the credit, in consultation with the Division of Small Business
27 Services, subject to the provisions of subsection (3) of this section. The

1 application shall contain identification information about the number of eligible
2 positions created and filled, a calculation of the base employment of the small
3 business for each year from fiscal year 2010-2011 and forward, verification of
4 investment of five thousand dollars (\$5,000) or more in qualifying equipment or
5 technology, and other information the authority may specify to determine
6 eligibility for the credit.

7 (3) (a) The maximum amount of credits that may be committed in each fiscal year
8 by the Kentucky Economic Development Finance Authority shall be capped
9 at three million dollars (\$3,000,000).

10 (b) 1. A small business shall not be eligible to apply for credits and receive
11 final approval for the credits until one (1) year after the small
12 business;

13 a. Creates and fills one (1) or more eligible positions over the base
14 employment, and that position or positions are created and filled
15 for twelve (12) months; and

16 b. Invests five thousand dollars (\$5,000) or more in qualifying
17 equipment or technology.

18 2. The small business shall submit all information necessary for the
19 Kentucky Economic Development Finance Authority to determine
20 credit eligibility for each year, and the amount of credit for which the
21 small business is eligible.

22 (c) The maximum amount of credit for each small business for each year shall
23 not exceed twenty-five thousand dollars (\$25,000).

24 (d) The credit shall be claimed on the tax return for the year during which the
25 credit was approved. Unused credits may be carried forward for up to five
26 (5) years.

1 ➔SECTION 68. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER
2 154 IS CREATED TO READ AS FOLLOWS:

3 *The authority shall establish the procedures and standards for a small business*
4 *development credit program by the promulgation of administrative regulations in*
5 *accordance with KRS Chapter 13A.*

6 ➔SECTION 69. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
7 READ AS FOLLOWS:

8 *(1) As used in this section, "small business" has the same meaning as in KRS*
9 *154.12-325.*

10 *(2) (a) For taxable years beginning after December 31, 2011, a small business may*
11 *be eligible for a nonrefundable credit of up to one hundred percent (100%)*
12 *of the Kentucky income tax imposed under KRS 141.020 or 141.040, and*
13 *the limited liability entity tax imposed under KRS 141.0401.*

14 *(b) A small business that is subject to the tax imposed by KRS 141.020 or*
15 *141.040 and that has tax credits approved under Subchapter 60 of KRS*
16 *Chapter 154 shall apply the credits against the income tax imposed by KRS*
17 *141.020 or 141.040 and against the limited liability entity tax imposed by*
18 *KRS 141.0401, with the ordering of credits as provided in Section 30 of this*
19 *Act.*

20 *(c) A small business that is a pass-through entity not subject to the tax imposed*
21 *by KRS 141.040 and that has tax credits approved under Subchapter 60 of*
22 *KRS Chapter 154 shall apply the credits against the limited liability entity*
23 *tax imposed by KRS 141.0401, and shall also distribute the amount of the*
24 *approved tax credits to each partner, member, or shareholder based on the*
25 *partner's, member's, or shareholder's distributive share of income as*
26 *determined for the year during which the tax credits are approved, with the*
27 *ordering of credits as provided in Section 30 of this Act.*

1 ➔Section 70. Sections 66 to 68 of this Act shall be known as the Emergency
2 Small Business Jobs Stimulus Act.

3 ➔Section 71. The following KRS sections are repealed:

4 141.416 Credit on license tax liability for approved company.

5 154.34-020 Legislative findings.

6 154.34-030 Staff of authority.

7 154.34-040 Personal liability of director or officer.

8 154.34-050 Funding for authority.

9 154.34-060 Interest in contract with authority by director, officer, or employee.

10 ➔Section 72. The General Assembly hereby approves and concurs in the transfer
11 or lease of approximately 1,550 acres, know as the Glendale site, for which funding was
12 provided by and through the Kentucky Economic Development Finance Authority to the
13 Hardin County Fiscal Court, to be used for a manufacturing facility for lithium-ion
14 battery cells and supporting or associated facilities.